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VOLUME IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 498

IN THE MATTER OF CRIMINAL CONTEMPT OF
THOMAS C. McCONNELL, PETITIONER.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 14, 1961
CERTIORARI GRANTED DECEMBER 11, 1961

In the

United States Court of Appeals

For the Seventh Circuit

No. 13160

PALMER G. LEE, TRANSPORTATION COMPANY,

Plaintiff-Appellant,

vs.

JOHN L. KENSEN, RAILROAD TRANSFER SERVICE, INC., HUGH W. GRESS, THE NEW YORK CENTRAL RAILROAD COMPANY, HOWARD F. SIMPSON, PAUL E. FLETCHER, WAYNE A. JOHNSTON, FRED G. GURLEY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, CHICAGO & NORTH WESTERN RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD and THE PENNSYLVANIA RAILROAD COMPANY,

Defendants-Appellees.

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VOLUME IV

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1597 • • (Caption—No. 56 C 323) • •

Chicago, Illinois
Thursday, May 5, 1960
2:00 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

1598 Present: (continued)
Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1599 By the Clerk: The case on trial.
By the Court: Bring out the jury:

(Thereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: All right; proceed.

JOHN F. WHITTINGTON, called as a witness on behalf of the Defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (continued) by Mr. McConnell.

Q. Mr. Whittington, you left Chicago in 1946, as I understood your testimony, is that correct?

A. That is correct.

Q. Did you serve on this subcommittee of six or did you attend any of the meetings of that sub-committee at any time subsequent to 1946 up to the meeting of May 19, 1955?

By Mr. Thompson: If the Court please, there isn't any evidence that there was any committee of six in 1946, 1947, 1948, or any other such date.

1600 By the Court: He may answer yes or no.

By the Witness:

A. No, sir.

By Mr. Thompson: It assumes what isn't so.

By Mr. McConnell: Did you say it assumes?

By Mr. Thompson: I said it assumes there as a committee.

By the Witness: There was no such committee as I recall.

By Mr. McConnell:

Q. There was no such committee?

A. That I attended, as I remember.

Q. Now, who was Mr. R. E. Coleman?

A. Former passenger traffic manager at Chicago.

Q. Of your railroad?

A. Of my railroad, and now he is freight traffic manager at Chicago.

Q. Just what did he have to do with this subcommittee of six?

A. He was the Baltimore and Ohio officer in charge of the Chicago territory, and delegated Mr. Nelson as a member of the committee.

Q. And he was under duty, was he, in your or-
1601 ganization, to report to you as to what went on?

A. If it was anything of interest that I should know about, he would, but not minor things he wouldn't.

Q. It had to be a matter of some importance before he would report it to you?

A. That is correct.

1602 Q. I show you a document which has been received here in evidence as Plaintiff's Exhibit 34, which purports to be a memorandum from Mr. Coleman to you, under date of January 7, 1955, and I ask you whether you received that memorandum or about the date it bears, and read it.

A. Yes. Those are my initials up there. It was referred to Mr. Holter, my assistant.

Q. And those initials show that you read it?

A. Show that I marked it over. I presume I read it.

Q. What was the purpose of putting your initials on it?

A. I marked it for my assistant who handled all contract matters, Mr. Holter.

Q. Now, Mr. Coleman states this to you, and this is in evidence:

> "As previously informed you, the Chicago Terminal Lines early last year appointed a sub-committee to make a survey of the Chicago transfer situation, particularly from an economic rather than a service standpoint as the latter has been satisfactory in its handling by the Parmelee Transportation Company."

1603 Did you see that statement made at that time?

A. I could have read that statement. I probably did. We are speaking about 1955?

A. January 7, 1955.

Did you take exception to the statement in any way?

A. Not in 1955 I didn't.

Q. Well, this is January 7, 1955. In response to that, you didn't take any exception to that statement?

A. That statement doesn't say for what period the service had been satisfactory. It could have been one month.

Q. What period prior to January 7, 1955 had the Parmelee company been rendering the service?

A. As long as I can remember.

1604 Q. There is also this statement:

"Should any of the other contractors subsequently submit proposals, even though the deadline is long passed, we will, of course, see that you are kept fully informed. R. E. Coleman."

What was the deadline that was long since passed?

A. I don't know what deadline the committee set on it. I don't know what date, I mean, the committee set as a deadline to receive the proposals. I didn't handle that.

Q. You don't know?

A. That is correct.

Q. Did you ever find out?

A. I never asked.

Q. Well, then, you didn't find out, did you?

A. I didn't find out.

Q. Nobody told you, you didn't ask and you never knew?

A. That is true.

Q. In your testimony this morning—Before I leave that, you said it wasn't cricket this morning because somebody from Parmelee was submitting a further proposal

1605 after May 19. Was that a deadline?

A. It was a deadline as far as I was concerned.

Q. You weren't setting a deadline for the committee, were you?

A. No, I was setting a deadline as far as the Baltimore and Ohio Railroad was concerned for a decision on the contract.

Q. You weren't in a position to dictate to the committee what the deadline was, were you?

A. I didn't dictate anything to the committee as far as the Baltimore and Ohio is concerned.

Q. And the committee didn't tell you there was any deadline at that time, did they?

A. Not that I know of.

Q. So the only deadline you are talking about is the one you had in your own mind for the Baltimore and Ohio, is that right?

A. Not at all. I had, as I explained, and my testimony will indicate what I had in my mind as to the two proponents, and I make my decision on that.

Q. So that May 19 was the end of it as far as you were concerned?

A. I was satisfied, because both proponents appeared before me, as a member of the committee, which 1606 made their final decision as far as I was concerned.

Q. You didn't suggest that Keeshin submit something after May 19?

A. I never met, never spoke or never saw Mr. Keeshin until he appeared before that committee in my life. I never met the man in my life until he appeared before that committee. How would I suggest anything to him? I never talked with him.

Q. I didn't ask you whether you had ever met him. I asked you if you ever suggested that that be done.

A. Never in my life.

Q. You are sure of that?

A. Positive, under oath I didn't.

Q. I show you a document marked for identification as Plaintiff's Exhibit No. 30, which is now in evidence in this case, which is supposed to be a memorandum from you or a memorandum by you and some handwriting. Can you tell us whose handwriting it is?

A. That is my handwriting. The date of it is—I can't read it. It is covered up.

Q. Well, I guess if you can't read it, I can't either, and I guess we are even on that.

1607 By the Witness: Your Honor, can I ask the date of this memorandum? It is covered, and I can't even see the date.

By the Court: If you can't read it, that is the answer.

By Mr. Freeman: May 20, 1955.

By the Court: Counsel says May 20, 1955.

By the Witness: That is correct, yes.

By Mr. McConnell:

Q. That is the day after the May 19 meeting?

A. That is correct.

Q. Where did you write that memorandum?

A. I wrote this from the memorandum that was delivered to me by Mr. Nelson.

Q. I asked you where.

A. My secretary wrote it. I didn't write it. My secretary wrote it.

Q. Did you dictate it?

A. Yes, I dictated it.

Q. Where?

A. I didn't dictate it. All he had to do was copy it and give me a copy of it. There was an identical memorandum Mr. Nelson delivered to the Union League Club on the 20th.

1608 Q. You didn't prepare it?

A. I didn't prepare it. Mr. Nelson prepared it.

Q. It has your name on it?

A. It is a memorandum for the file so we would have the record of everything that went on in connection with this meeting.

Q. Mr. Nelson you say prepared it?

A. No, I said Mr. Bone delivered it to Mr. Nelson.

Q. Did you or did you not prepare this memorandum which appears over the name "J. F. Whittington," under date of May 20, 1955?

A. If it is the same memorandum that I think it is—

Q. Well, look at it.

A. If I can see Mr. Nelson's memorandum, then I would know whether it is or not.

Q. I didn't ask you a thing about Mr. Nelson's memorandum. Just look at that memorandum.

A. This was written by me after I had received a memorandum from Mr. Nelson of which I don't have a copy.

Q. All right.

A. The contents I think are about the same.

Q. Well, I didn't ask you anything about the contents of any other document. This morning in your testi-
1609 mony you said, or I will ask you if you didn't say this:

"And I knew by the same token, I knew that in the fifth year if it held up it would be two cents higher than the proposal made by Mr. Keeshin. I knew we weren't sure of the service we would get under any proposal from the Parmelee people."

In your memorandum of May 20—

By Mr. Thompson: If the Court please, we object to reading from transcripts. It is improper as counsel well knows. The jury will remember the answers, and he can examine the witness and cross examine him all he pleases, but he can't read from a transcript and repeat the evidence in the record.

By Mr. McConnell: I can read from the transcript and ask him if he so testified, and I ask that question. I think I skipped the question.

By Mr. Thompson: You can't even do that, as counsel ought to know.

By Mr. McConnell: Yes, I can.

By Mr. Thompson: We object to it.

1610 By the Court: I will let him answer.

By Mr. McConnell:

Q. Did you so testify?

A. Let me have the question, please.

By Mr. McConnell: Read the question.

(Whereupon the record was read as above recorded.)

By the Witness:

A. That is correct.

By Mr. McConnell:

Q. I call your attention to your memorandum under date of May 20 and in your own handwriting and ask you if those red figures inserted there are the coupon rates to be charged by Mr. Keeshin under his proposal.

A. That is correct.

Q. And will you tell us under the fifth year in your own memorandum what the rate was that was to be charged by the Parmelee company and the rate that was to be charged by the Keeshin company?

A. $1.27 for Keeshin.

1611 Q. What was it for Parmelee?

A. The memorandum that was delivered on the 20th indicated that it was $1.25.

Q. And that is your memorandum there, isn't it?

A. Taken from the one delivered to me.

Q. All right, it is your memorandum.

A. Absolutely right.

Q. So that on your own memorandum, it showed that the Keeshi proposal was two cents higher than the Parmelee proposal in the fifth year, doesn't it?

A. Absolutely.

Q. Just the opposite of what you testified to, I think, isn't it?

A. No, it is not the opposite. It is $1.27 is what I said, and that is what it is.

Q. That is for Keeshin.

A. That is correct.

Q. That is higher than the Parmelee proposal?

A. I said it was higher. I knew it was two cents higher.

Q. In your testimony this morning you said that the Parmelee proposal was higher.

A. Well, then if I used the word—it is Keeshin would be two cents higher. Just the name of the 1612 company is in error, that is all there.

Q. So you really meant what your memorandum says?

A. That Keeshin's rate the fifth year would be two cents higher.

Q. Than Parmelee?

A. Than Parmelee.

Q. And you knew, you had been informed by Mr. Coleman, that the whole purpose of this subcommittee was to try to get a lower coupon rate, isn't that right?

A. That is what the memorandum said. That is what he wrote in his memorandum.

Q. Well, he was keeping you advised of it, wasn't he?

A. That is correct, but I was more interested in service, too. That was my interest.

Q. Well, did you write him at any time—

A. Not that I can remember.

Q. Prior to May 19, and tell him, "I am not interested in the coupon rate; I am interested in the service"?

A. No, I did not.

Q. Did you tell anybody that was serving on that committee on behalf of the Baltimore and Ohio, "I am not interested in the coupon rate; I am interested 1613 in the service"?

A. I was interested in any proposition—

Q. That isn't what I asked you.

A. What are you asking me? What do you want to know?

By Mr. McConnell: Read the question.

(Thereupon the question was read as above recorded.)

By the Witness:

A. No, I did not.

By Mr. McConnell:

Q. Now, when that memorandum, this is May 20, which is a day after the May 19 meeting, isn't it?

A. That is correct.

By Mr. Thompson: We will concede that.

By Mr. McConnell: Good. I am glad to have some concession from you on this record.

By Mr. Thompson: May 20 is one day after May 19.

By Mr. McConnell: That is about the only concession I could get out of you.

By Mr. McConnell:

Q. Will you note on that memorandum that you
1614 say "suggest" — I had better get the exact language.

A. "Suggest advise."

Q. "Committee after talk with his labor people would be no increase beyond 1957 or $1.23 rate would continue last two years of contract."

Now, who are you referring to there?

A. Mr. Keeshin's remark to the committee. The word "he" means Mr. Keeshin.

1615 Q. Did he ever make such a proposal?

A. He didn't make it as a proposal. He told the committee what would happen in the last two years; that he hadn't negotiated his contract for the fourth and fifth years, but under no condition would the rate be higher than he had specified, $1.25 and $1.27.

Q. That isn't what your memorandum says, is it?

A. It says, "suggest advise."

Q. This says:

"It would be no higher beyond 1957 or $1.23 rate."

A. And if he didn't have to give any increase, he said he would continue at the $1.23 rate, but he had to negotiate the last two years.

Q. Well, at no time did Mr. Keeshin ever change —

A. From the $1.27 —

Q. (Continuing) — from the rate that he first proposed on December 15, 1954, isn't that correct?

A. No. There is a supplement to this in which he verifies the fact here. I think it was a later date, that he gave a definite rate. January 15, he said,

"Since the labor contract is now settled covering
1616 a three year period, I am willing to correct the original proposal on the escalator clause so that the rate would be $1.22 and $1.23."

Q. Where do you get the $1.25 and $1.27 for 1958 and 1959?

A. That is what was discussed at the meeting with the committee.

Q. And that is what he agreed to in his contract, wasn't it? Isn't that the rate you finally contracted upon?

A. He didn't specify that in his contract. He told the committee that on the 19th.

Q. All right. His proposal then was for the year 1958, $1.25 for the coupon as opposed to $1.24 by Parmelee; and $1.27 for 1959 as opposed to $1.25 by Parmelee, isn't that right?

A. There is a difference of two cents on the last year.

Q. That is right.

A. That is what I said, two cents on the last year. I testified to that this morning.

Q. You weren't suggesting that he lower his rate?

A. I never made a suggestion to Mr. Keeshin in any way.

1617 Q. In the meeting, you didn't make a suggestion?

A. Not a suggestion that change his contract or do anything. I asked him questions pertaining to his

service and his rates as far as the Baltimore and Ohio was concerned. I made no suggestion of any kind to Mr. Keeshin.

Q. All right. All you were doing was asking questions to get some information, is that right?

A. For the benefit of my railroad which I represented, that is correct.

Q. Now as soon as you heard the proposal — I will withdraw that.

After you saw this difference in rate which you set out in this memorandum of yours, you came to the firm conviction, did you, that Keeshin ought to have the contract?

A. The rate wasn't exactly the controlling factor. The labor problem was what was the controlling factor. One year contract versus three year contract meant better service to our patrons over the three year period, and the Parmelee people had no contract, and the two cents in the fifth year would be worth it as far as the Baltimore and Ohio was concerned if we knew we were going to have the right service.

1618 Q. Did Keeshin have a contract at that time?

A. For three years, he did.

Q. With a union?

A. Yes.

Q. For service by whom?

A. I don't know; to perform this service.

Q. He didn't even have a company at that time, did he?

A. He must have had a contract with the union because that is what he said.

1619 Q. Did you ever see any contract he had with the union for three years at that time?

A. No. I have got his letter in writing where he said he had a contract. I took him at his word.

Q. He had assurances, isn't that it?

A. Maybe the word is assurance.

Q. How could he have a contract when he didn't even have a company? He didn't have a contract —

A. May I answer? January 15 is what he said, "Since the labor contract is now settled covering a three-year period." That is what I had.

Q. You interpreted that as meaning he had a contract?

A. Well, that is what it says. To me it does.

Q. He didn't have any contract from the railroads, did he?

A. No, not on January 15.

Q. And he didn't have any on May 19, did he, either?

A. I don't know. I don't know.

Q. Well, he didn't have any from your railroad, did he?

A. No, he didn't have the contract to perform the services even.

Q. That is right. You had entered into no con-
1620 tract with him on May 19 to render the service?

A. Not a bit.

Q. Not your company?

A. No.

Q. And you hadn't given him any assurances that he was going to have it, did you?

A. I had not.

Q. So far as you know, the committee hadn't acted on it at that time, had it?

A. The committee hadn't acted on May 19.

Q. Yet you think he had a contract with labor to perform these services with the union prior to the time he had any contract with the railroads to do the business?

A. I don't know whether he was using his present union or who he was using. When he used the words "contract with the union" I presume he was talking about the people that would perform the service.

Q. Well, now, this was a big matter of interest to you, labor?

A. It certainly was.

Q. Did you know what union he was going to use?

A. I did not.

Q. You never even looked into that?

1621 A. Never did.

Q. You didn't know that there has been disputes between that union and the AFL Teamsters here in Chicago for years?

A. I didn't know that.

Q. You didn't know there had been a labor war continuously going on —

By Mr. Meserow: Objection.

By Mr. Keating: Objection. There is no evidence of that at all. This is Mr. McConnell's imagination.

By Mr. Meserow: Objection. There has been no labor war.

By the Court: Objection sustained.

By Mr. Thompson: I move to strike the questions and answers based on an assumption of fact which is not in evidence.

By the Court: I sustain the objection.

By Mr. McConnell:

Q. Did you ever make any investigation of that fact?

A. I did not.

Q. Did you ever order anybody else to make such an investigation?

1622 A. I did not.

Q. But that was the big question in your mind, the labor question, was it?

A. Having a contract.

Q. Yes. Parmelee didn't have any contract with your company at any time extending beyond —

A. I said he didn't.

Q. — extending beyond July 15?

A. I said he didn't.

Q. I am talking about with your company, the railroad.

A. We are only a member of all the railroads that are in the Chicago terminal. We are one of the twenty-one lines.

Q. I know you are one of the twenty-one lines. I am asking you whether you had contract — let me ask it this way: When did your understanding under which Parmelee was handling your transfer work expire?

A. I think it was on a year-to-year basis.

Q. You never had any contract with him, did you?

A. No, never had any contract.

Q. You never gave him a contract. You could terminate it at any time?

1623 A. Mr. Padrick handled the contract. I wouldn't know.

Q. I don't care who handled it. I said you didn't have one, did you?

A. Not that I know of.

1624 Q. Did you know that Parmelee company had the A.F. of L. union serving them here?

A. I don't know.

By Mr. Thompson: We object to that as immaterial.

By Mr. McConnell:

Q. That it had been serving them year after year?

By Mr. Thompson: There is no evidence of any such thing.

By the Court: I will sustain the objection.

By Mr. McConnell:

Q. Was the labor element a thing that swayed your mind on this question?

A. The strike is what swayed my mind, and the fact that Mr. Markin would not divulge to the railroads a profit and loss to indicate that he was even entitled to the rate he was getting over this period of years.

That was one of the primary thoughts, combined with the fact we had suffered a strike in 1950.

Those are the things that I was concerned about as far as my railroad was concerned.

Q. That strike was four years ago, four years prior

to this time, five years prior to this time, wasn't 1625 it?

A. 1950.

Q. Five years prior to the time of this negotiation?

A. Yes.

Q. The other thing was the profit and loss statement, is that it?

A. That is correct.

Q. You never had any contract that required Mr. Markin to furnish a profit and loss statement, did you?

A. No, he wasn't required. He was asked to do it.

Q. You had no legal right to require him to furnish a profit and loss statement, did you?

By Mr. Thompson: We went all over that this morning. Objection.

By the Court: Objection sustained.

By Mr. Thompson: He is wrestling around and arguing his case, and we object to further examination along that line.

By Mr. McConnell:

Q. I show you a document, and I refer to a document which is in evidence here, I believe, a document in evidence which purports to be a memorandum of the meeting in Chicago of Thursday, May 19, 1955, of the sub-
1626 committee of the Chicago Terminal Lines with Keeshin and Parmelee, their proposals under date of May 20, 1955, which is Plaintiff's Exhibit No. 25.

This recites that this is the meeting of the regular subcommittee of the Chicago Terminal Lines augmented by the presence of Mr. J. F. Whittington, general passenger traffic manager, Mr. R. E. Coleman, passenger traffic manager, Baltimore and Ohio Railroad—

By Mr. Thompson: No, the Pennsylvania.

By Mr. McConnell: Do you want to read this, or shall I?

By Mr. Thompson: Well, I just wanted you to read it truthfully.

By Mr. McConnell: I read it exactly as it is written.

By Mr. Thompson: No; Mr. Whittington of the Baltimore and Ohio and Mr. Comer of the Pennsylvania.

By Mr. Freeman: You are wrong.

By Mr. McConnell: You are just about as accurate about that as everything else in this lawsuit.

By the Court: Let's proceed.

By Mr. McConnell: I will read it again.

1627 By Mr. Thompson: All right, fine.

By Mr. McConnell:

Q. The regular sub-committee of the Chicago Terminal Lines augmented by the presence of Mr. J. F. Whittington, general passenger traffic manager, and Mr. R. E. Coleman, passenger traffic manager, Baltimore and Ohio Railroad, Mr. E. R. Comer, passenger traffic manager of the Pennsylvania Railroad, Mr. J. B. Brennan, passenger traffic manager of the Chicago and North Western Railway.

1628 You have told us why you were there, but do you know why these other people were there augmenting the regular subcommittee?

A. I guess to listen and talk to the two proponents, the same as I was.

Q. Who suggested the idea of somebody other than the regular committee attending?

A. I wouldn't know that. I know what my opinion was and what I should do.

Q. I didn't ask you about your opinion. I just asked you if you knew who suggested that, if somebody did?

A. I don't know.

Q. You told us this morning that Mr. Keeshin suggested in that meeting that he was going to spend up to $500,000 in new equipment. Wasn't it the Parmelee people that suggested they would spend up to $500,000?

A. Mr. Markin's remark was it would cost $500,000.

Q. Didn't he say that he would spend up to $500,000?

A. I don't know whether the word was "cost" or "spend", but he used the same term "$500,000".

Q. Did you understand that he was proposing that he would spend $500,000 on new equipment?

1629 A. Eventually, he said that is what it would be. I think he said that he would buy so much equipment and then replace the old as it wore out.

Q. Did you understand Mr. Markin to say that he proposed to spend $500,000 for new equipment?

A. I don't remember the word "proposed".

Q. You are going to quibble with me over the word "propose," is that it?

A. Either propose or cost. I couldn't remember five years ago what he said, but I think he said it would cost $500,000.

Q. It would cost $500,000 for what?

A. To replace all of the equipment to handle the transfer business in Chicago.

Q. Do you recall that he proposed at that meeting to purchase thirty—and you don't need to refer to any notes, as I am asking you this for your recollection—

A. I was looking—I thought you were looking for the $500,000.

Q. No, I am not looking for anything. Do you recall that Mr. Markin said that he intended to purchase thirty, twelve passenger limousine type vehicles?

A. Yes. I don't know whether it was thirty or forty. It may have been forty, but thirty is what I think 1630 it was.

Q. Do you remember they were twelve passenger limousines that he was going to purchase?

A. No, I don't remember the type, no sir.

Q. Do you recall he stated, "It is expected it will take at least twelve months to complete the replacement with the thirty, twelve-passenger limousine type vehicles"?

A. I think he said it would take twelve months before he could get the additional equipment of thirty, if he said thirty, pieces of equipment, I think he said it would take six, twelve or eighteen months to get it. I think that is what the statement was, something to that effect.

As to time, I wouldn't know exactly what he said.

Q. You understood, didn't you, that he was intending to amortize the $500,000— Well, let me ask you this:

I am reading from the memorandum, the notes of the meeting which is in evidence, and I ask you whether he did state this:

1631 "Mr. Markin advised that the new equipment mentioned above which will be purchased and put in service as promptly as available will cost in the neighborhood of $500,000."

Do you recall him making that statement?

A. That is right. In fact, that is in his proposal. I think it is in his proposal.

Q. I think it is, too. I am just trying to get you to admit it.

So the $500,000 that you were talking about wasn't attributable to Mr. Keeshin's offer; it was attributable to Mr. Markin's offer, wasn't it?

A. If my recollection serves me correctly, they both used $500,000.

Q. I will show you the memo and the notes of the meeting and ask you if you can show me anywhere in here where any mention of $500,000 is contained in those minutes except on the proposal by Mr. Markin.

By Mr. Keating: I object to that, your Honor. The witness has testified what his recollection is. Mr. McConnell

is showing the witness an exhibit prepared by some-
1632 one else and is attempting to create the impression Mr. Keeshin didn't mention the $500,000, whether or not the fact is mentioned in that exhibit prepared by some third person, and on that basis I object.

By Mr. McConnell: This memo was prepared by the Baltimore and Ohio representative and appears from their files, produced from their files and offered in evidence against the Baltimore and Ohio.

By Mr. Keating: And it wasn't prepared by Mr. Whittington, the witness who is being questioned.

By the Court: I have forgotten the question.

By Mr. McConnell: I asked him, your Honor, whether there was anything in the memorandum that shows that, and he can point it out.

By the Court: He may look at it if it does. He may look at it.

By the Witness: Do you want to see this, your Honor?

By the Witness:

A. This memorandum only mentions Mr. Markin.

By Mr. McConnell:

Q. You have heretofore testified, have you not,
1633 that those memoranda which came out of your files are accurate, an accurate report of what occurred at that meeting.

A. That is correct.

By the Witness: Your Honor, may I answer the question now?

By the Court: I don't know of any question.

By Mr. McConnell:

Q. You answered the only question I asked you. I asked you if it accurately set forth what happened at that meeting, and I thought you said "Yes."

A. That is correct. That $500,000 was in Mr. Keeshin's original proposal also.

Q. I didn't ask you that.

By Mr. McConnell: And I move to strike it out as not responsive to any question I asked.

By the Court: I will overrule the objection. The question addressed was Parmelee suggesting it, the only one suggesting the $500,000.

By Mr. McConnell: In that meeting, yes.

By the Court: He added to it, in Keeshin's original offer, that it contained the $500,000.

By Mr. McConnell:

Q. Is there anything in the memorandum which
1634 I showed you that mentions Mr. Keeshin suggesting $500,000 for new equipment?

A. Not that Mr. Nelson prepared.

Q. There isn't, is there?

A. No.

Q. You have testified it accurately sets forth what occurred at the meeting?

A. That is correct.

Q. All right.

I will show you a document which has been marked for identification as Plaintiff's Exhibit No. 35, which purports to be written by Mr. Coleman, passenger traffic manager under date of September 8, 1954.

I ask you if you have ever seen that document before.

A. No, sir.

1635 By Mr. Thompson: Did you say defendants'?

By Mr. McConnell: I didn't.

By Mr. Thompson: I am sorry; I misunderstood.

By the Court: He said plaintiff's.

By the Witness:

A. No, sir.

By Mr. McConnell:

Q. I show you a document which is marked for identification as Plaintiff's Exhibit No. 24.

By Mr. Freeman: It has been received. It is in evidence.
By Mr. McConnell:

Q. (Continuing) Which is in evidence, which purports to be a meeting of January 5, 1955. I ask you if you can identify the handwriting on that memorandum?

A. I cannot, and it is not mine.

Q. This is on the letterhead of the Baltimore and Ohio Railroad Company, and it professes to be a meeting of January 5, 1955, and it is in evidence, and it came out of your company's files.

1636 Who was sitting on the committee at that time representing your company?

A. What period?

Q. January 5, 1955, at the meeting of January 5, 1955.

A. I presume it was Mr. Nelson. I presume it would be.

Q. Isn't that his handwriting?

A. I don't know. You will have to ask Mr. Nelson. I really can't tell you whose handwriting that is. If I knew, I would say, but I couldn't say that is Mr. Nelson's handwriting.

Q. This note from your representative at that meeting, which comes out of your files and introduced in evidence says this:

"J. L. Keeshin proposal not sufficient decrease from present cost to warrant change from Parmelee Company."

There never was a change in Mr. Keeshin's proposal as to the rate after December 15, except for that little modification that you showed me?

A. The modification covered the actual rate, which was January 15.

1637 By Mr. Thompson: If the Court please, we have over this a half dozen times, and I object to it.

By Mr. McConnell: I have not been over it a half dozen times.

By Mr. McConnell:

Q. I am pointing out that with the Keeshin proposal before the representatives of the Baltimore and Ohio and with not even having seen the Parmelee proposal at that date, he made this comment.

Did you ever see this before?

A. I never saw that memorandum, and I never heard the comment.

1638 Q. When you got interested in this meeting, did you go back and look at the files to see what was in them?

A. No, I did not.

Q. You didn't go and see what other people had said about this matter?

A. I became interested when we got a definite proposal.

Q. Did you ever go back to the files to see what anybody had said about it who had been dealing with the committee?

A. No, I did not.

Q. You never asked Nelson what he had written or—

A. I did not.

Q. (Continuing) —or suggested or recommended?

A. I did not.

Q. Now you attended this meeting of June 3rd, you said in your direct examination.

A. I did.

Q. Did Mr. Keeshin at that meeting tell you that he had purchased fifty 6-passenger Ford station wagons, ten 8-passenger Ford station wagons, two station wagons to handle remains, and forty 20-foot trailers, 25 tractors?

1639 A. He said he had ordered it in the face of the pending steel strike.

Q. At that time he had not been awarded any contract?

A. That is correct.

Q. Had you talked to any other railroads about what their vote was going to be in this matter prior to this June 3rd meeting?

A. No one, no other railroad passenger traffic officer.

Q. You never talked to Mr. Baird of the New York Central?

A. Not regarding his vote. My talk with Mr. Baird was that this matter had reached the point where the passenger traffic managers ought to get together and settle it once and for all and know where they were going. That was my conversation with Mr. Baird.

Q. Where did you have that conversation?

A. The memorandum will show. It was in New York.

Q. Where was it, and then?

A. The date I wouldn't know, and it was in his office in New York.

Q. Was it prior to the May 19 meeting?

A. It certainly was. I think it was, anyhow. I have got to see the memorandum to remember the date.

1640 This is five years ago.

Q. Did you suggest to him at that time that you ought to make a contract with Keeshin?

A. I never discussed either one of the proponents with Mr. Baird at any time. I discussed the necessity of the general passenger business of these railroads getting together and deciding on what they should do about the transfer arrangements. That was as far as I ever discussed it.

Q. Is that why we had the committee augmented by these other people?

A. I asked Mr. Baird if he was going to be at the meeting, and he said he was. He told me he was going to be there.

Q. Did you talk to anybody else from any other railroad?

A. No other passenger traffic manager that I discussed that question with.

Q. He was the only one?

A. That is correct.

Q. Did you ask him to talk with anybody about it?

A. I did not. I didn't suggest that. I told him that there was a meeting in Chicago of the American
1641 Association of Passenger Traffic Officers the latter part of the month, of which I am chairman of the advisory board, if I can put that in, and I am past president, and he was president, and I said, "We ought to talk to these passenger traffic managers and get them to agree to attend these meetings and settle this question."

That is what I said to Mr. Baird.

1642 Q. All right. Now did you talk to Mr. Simpson, who was the president of your railroad, about this matter?

A. Several times.

Q. When did Mr. Simpson get interested in the matter?

A. He was interested in it in 1954, very much so.

Q. When did he first talk to you about it?

A. All through 1954. I wouldn't remember the first time.

Q. Wasn't the first time he asked you to get interested in April of 1955?

A. That is not a fact.

Q. Did he ask that you report to him on the matter in 1955?

A. Yes, he did.

Q. April 11th, to be exact?

A. No.

Q. When?

A. April 4.

Q. You wrote a report or you got him a report on April 11, didn't you?

A. I didn't write a report. I had it prepared.

Q. On April 11?

1643 A. No, it was written during the week and dated on April 11.

Q. All right. When did it get to Mr. Simpson?

A. When I got back to Baltimore on the 11th, and I place that date because it was following Easter.

Q. Prior to that time you hadn't had any active connection with this matter at all, had you?

A. What do you mean by active?

Q. Well, you hadn't been reading any of the memoranda on it?

A. Sure, I read the memoranda that came across my desk there.

Q. You just told us you didn't read this memorandum to Mr. Nelson?

A. I didn't see it. It was never sent to me. That memorandum was never sent to me.

Q. And you never went to the files to find any memorandum?

A. I wouldn't come to Chicago and look through their files to see what the arrangements were.

Q. You came out here how often, two or three times a month?

A. No, twice a month, sometimes three times.

Q. Yes, and you never made any recommendation

1644 that any general passenger traffic agents get interested in this matter prior to this meeting of May 19, did you?

A. Until after the proposals were received, then I thought it was time for the passenger traffic officers to make a decision and get together and settle it, yes. I talked to Mr. Baird. He is the only one.

Q. That was the May 19 meeting?

A. May 19, yes. I don't know when I talked to Mr. Baird if a date had been set for the meeting. I am not positive.

Q. Did you talk to anybody about this after the May 19 meeting and between the May 19 meeting and the June 3rd meeting?

A. I did not. No one knew until I arrived in Chicago on June 3rd what I was going to do.

Q. And you didn't know what anybody else was going to do, is that right?

A. I knew what my interest was.

Q. You didn't know what anybody else was going to do?

A. I didn't ask what they were going to do.

Q. I didn't ask you that.

1645 A. If I didn't ask them, how could I know?

Q. I just asked you a simple question. Did you?

A. I did not. I did not.

Q. Did you know that there was a split in the committee of six at the meeting of May 19?

A. At that time I did not.

Q. When did you find that out?

A. I heard it in the courtroom.

Q. That is the only time you ever knew about it?

A. That is the only time I ever heard of it.

Q. Was there any discussion in the May 19 meeting by Mr. Keeshin when he appeared there in the morning about financial difficulties that he had had in the trucking business?

1646 By Mr. Thompson: We object to that as immaterial to any issue in this case.

By Mr. Meserow: Your Honor, I object to it because it is based upon a statement that is not true. There is no showing in this evidence of financial difficulties.

By the Court: The question is did you ever hear —

By Mr. McConnell: I asked if he heard of any such difficulties.

By the Court: Read the question, please.

(Whereupon the question was read as above recorded.)

By the Witness:

A. No, sir, that I can recall. Maybe he mentioned something about his financial standing and credit. I think he mentioned something like that, but I can't remember exactly what he said.

By Mr. McConnell:

Q. Did he say anything about his having financial difficulties?

A. I don't know whether he used the word "financial" or his financial conditions. He made have said "financial condition." I don't know. I knew nothing about his 1647 financial condition.

Q. You didn't know anything about it or you didn't know anything about any difficulties your railroad had had with one of his companies?

A. Never in my life until I heard about it.

Q. When did you hear about that?

A. I think it came out —

By Mr. Thompson: We object to all of this as immaterial. It has nothing to do —

By the Court: Objection sustained.

By Mr. Meserow: Just a minute now.

If your Honor please, I see what exhibit he has got here, and I am going to object to his even asking his question. Mr. Freeman tried to do it before, and it is entirely beyond the scope of public injury, and all he is doing it for is to poison the minds of the jury again. I am objecting to it.

By the Court: I haven't any question pending before me.

By Mr. McConnell: Anything that has anything to do with Mr. Keeshin or what this lawsuit is about is
1648 poisoning the minds of the jury. I am trying to show what person they are dealing with.

By Mr. McConnell:

Q. I show you a document which has been marked for identification Plaintiff's Exhibit 37, and ask you if you know anything about this proceeding or this petition which is apparently filed on behalf of your railroad.

A. I can say under oath I know nothing about it whatsoever.

Q. Did you ever make any investigation of his financial situation?

A. On behalf of the Baltimore and Ohio?

Q. Yes.

A. No, I didn't. But I think one of the other railroads did.

Q. I am asking whether you did.

A. I didn't personally, but one of the other railroads did.

Q. All right. Did your railroad make any investigation of his financial condition or standing?

A. In regard to the contract?

Q. Yes.

A. No, they wouldn't have to.

1649 Q. I didn't ask you whether they had to. I asked you whether they did.

A. Not that I know of.

Q. You were greatly concerned about this profit and loss statement, you told us.

A. I certainly was.

Q. Did you ever get any profit and loss statement from Mr. Keeshin in the first two years of this contract?

A. Never got one in my life that shows a loss and profit for transferring passengers through Chicago.

By Mr. Thompson: Now, just read that question.—

By Mr. McConnell:

Q. One in your life for what?

A. I mean, I have never seen one. Never received one that shows a profit and loss for transferring passengers through Chicago.

By Mr. McConnell: May we have a little recess?

By the Court: Yes.

(Whereupon the following further proceedings were had herein, in open court, out of the presence and hearing of the jury:)

1650 By the Court: Do we have any idea of how long this will take?

By Mr. McConnell: I think I am almost through.

By the Court: I mean the whole thing. Tomorrow is Friday. We can work all day tomorrow, and finish it? If so, I will not say anything about it. I want to help you work it out so we can wind it up. I don't mean to rush it. I am prepared for Monday. The jury is held over for a week.

By Mr. Thompson: Let's not say anything about it and let Nature take its course. If we are through tomorrow, we are through.

By the Court: I would like to know for my own information.

By Mr. McConnell: We have a little rebuttal, you know.

By the Court: All right.

By Mr. Thompson: Just a moment. I just want nothing said about it, before the jury, as to when we are going to get done.

By the Court: Of course not.

By Mr. Thompson: And I don't know when we are going to get done and nobody else does as far as I know.

I just want to say that Mr. Whittington wants
1651 to get this 4:00 o'clock train back to Baltimore. He has an appointment with his president tomorrow. I assume we will be through before then?

By Mr. McConnell: I think so, Judge.

May I ask this — this hasn't anything to do with your position — but I have a hearing which was postponed before Judge Adesko at 4:00 o'clock tomorrow afternoon, and I wonder if I could be excused to attend that McDonald case?

By the Court: I will say this to you, Mr. McConnell, if we are going to hold over anyhow, I have no objection to recessing earlier. I want to cooperate as much as I can.

By Mr. McConnell: We have rebuttal.

By the Court: If it is a matter of holding over anyway, I have no objection to letting it go at that time.

(Whereupon a brief recess was taken.)

1652 By the Court: Bring out the jury.

(And thereupon the following further proceedings continued in the presence and hearing of the jury:)

By the Court: Proceed, please.

By Mr. McConnell:

Q. Mr. Whittington, you told us on April 4 that Mr. Simpson, the president of your company, asked you to bring him up to date on the transfer matter, is that correct?

A. That is correct.

Q. What did you do pursuant to that request?

A. I sent for Mr. Holter who handled contract matters and asked him would he make a memorandum up for the

president, to bring him up to date of what the status was of the Parmelee matter.

Q. After Mr. Holter had prepared that memorandum — let me ask you this, first: Did Mr. Holter prepare such a memorandum?

A. He did.

Q. And after Mr. Holter prepared it, did you review it?

1653 A. I reviewed it, yes. I read it anyhow. I didn't study it. I read it.

Q. You knew the purpose of it was to give Mr. Simpson all the material facts he needed to know what this terminal situation or transfer situation was, isn't that right?

A. That is correct.

Q. I will show you a document which is in evidence here, produced from your files and identified as Plaintiff's Exhibit No. 16, and ask you whether or not that is the memorandum which Mr. Holter prepared and which you reviewed and which was turned over to Mr. Simpson.

A. Forwarded to him through our vice president.

Q. Well, that is just getting it to him, isn't that right?

A. That is right.

Q. You have to hand it from one person to another?

A. Protocol.

Q. Protocol says it has to go to the vice president and then to the president?

A. That is right.

Q. You couldn't take it in yourself and give it to him?

A. I could if I wanted to, but as long as the vice
1654 president was there, that is the thing to do, because I work for him.

Q. But it got there?

A. That is right.

Q. And it got there after you reviewed it?

A. That is right.

Q. Let me see it a moment, and then I want to ask you a few questions about it.

At the time this was prepared, the Keeshin proposal had been received, had it not?

A. It had.

Q. Is there any mention made of it in this report?

A. I don't know. I didn't read it again. I didn't read it through, or I would know. I think it refers to getting other people interested in it. I think it says something like that, but I didn't review it, the complete file or know what is in it.

Q. All right. I want to call your attention to this which was in the report, on Page 3 of that exhibit, the last full paragraph:

"One suggestion made from time to time is that we discontinue all passenger transfer and let the passenger use regular taxicabs at their own expense,
1655 but arrange for separate transfer of checked baggage. The difficulty with this is that many of the transfers are for close connections, and during inclement weather taxicab service just would not be available, while today Parmelee assumes responsibility for this service and generally does a good job."

Did you read that before it went to your president?

A. Yes, I read it.

1656 Q. You didn't take any exception to that statement?

A. The word "generally" could mean — "generally" doesn't mean it is perfect.

Q. Yes, I know, but I just asked you whether or not you took any exception to it at that time.

A. No.

Q. You didn't say that "generally" is too broad a word or may mean a number of other things, and "you ought to be more specific"?

A. No.

Q. You weren't in any lawsuit at that time, were you?

By Mr. Thompson: We object to that. It is improper.

By the Court: Read the question, please.

(Whereupon the record was read as above recorded.)

By the Court: Objection sustained. It may be stricken.

By Mr. McConnell:

Q. Now, referring to Parmelee, this report says:

"They say they will be required to spend about $500,000 over a period from six months to a year and 1657 can only justify this expenditure if they have a five-year contract with the railroads."

Did you accept that as a true statement?

A. Yes, I accepted it. I think that is in the Parmelee proposal.

Q. And you were bringing to the attention at that time — you were attempting to, at least, everything you thought was material for Mr. Simpson to know in dealing with this matter, is that right?

A. Yes.

Q. And you didn't say one single word in that report about any labor troubles with Parmelee, did you?

A. Not a word.

Q. And you didn't say one single word about a profit and loss statement, did you?

A. Not a word.

Q. And you didn't say one single word about a strike in 1950, did you?

A. He didn't ask for that.

Q. You didn't say it either, did you?

A. No, but he didn't ask for that.

Q. And you didn't say it?

A. I didn't prepare the memorandum. Mr. Holter didn't say it, and I didn't take exception to what he said.

Q. And you didn't add anything?

1658 A. And I didn't add anything.

Q. In paragraph 2 there is a statement of the Parmelee rate increases, and I ask you to look at that and tell us whether that is a correct statement of the Parmelee rate increases up to that time.

A. Shall I read it?

Q. Just read it to yourself.

A. Oh, I thought you wanted me to read it aloud. I have read it. I read the second paragraph.

Q. Is that a correct statement of the rate increases?

A. This doesn't say anything about the rate increases, the second paragraph. You asked me to read the second paragraph, and that is what I read.

Q. Well, is that a paragraph?

A. It is a heading.

Q. And that is a paragraph?

A. All right; I will read that one.

By Mr. Thompson: What is so funny?

By the Witness:

A. Yes, that has to do with the rate increases.

By Mr. McConnell:

Q. Is it accurate? That is what I want to find out.

A. Without any dates here—that is the progress of the increases, except it didn't put in the $1.05, and

1659 it doesn't have that, the $1.05 in it, or the $1.12½ in it. Those two things are omitted, and it doesn't have the dates as to when they were increased.

Q. But you approved it when it went up to your president?

A. Yes; that was a general picture of it for our president. He could get what he wanted to know from that.

Q. All right.

Now, let's go to another question, and I will try to get through so you can catch your train, if I can.

How many times did you ride on this Keeshin equipment?

A. Not over once or twice.

Q. In the four or five years of the contract?

A. That is correct.

Q. When was it?

A. I think it was in the last two or three years—in the last two years. I looked at it and got in it and rode it.

1660 Q. This air conditioning is not a built-in air conditioning, is it?

A. I don't know the mechanism of it.

Q. It is just a little box up in front?

A. I don't know the mechanism. I know it was air conditioned.

Q. You are not an expert in air conditioning, I take it?

A. That is correct.

Q. You never saw any of the twelve-passenger limousines that Parmelee proposed to put in—

A. No, I didn't.

Q. —because they didn't get the contract?

A. No, I didn't.

Q. You spoke of the pretty girls that met the train, the stewardesses. Did Parmelee have somebody meeting trains and telling people where to go?

A. They had attendants.

Q. Well, they were men?

A. That is right.

Q. They weren't as attractive as pretty girls, but they gave information of where to go?

A. That is correct.

Q. And that was their function, wasn't it?

1661 A. That is right.

Q. And they had them there?

A. They had the men there to load—they had a supervisor there to load their limousines.

Q. You say Parmelee had telephone service to get their cabs when they wanted to go?

A. That is what Mr. Markin said. He said that was the system they had, and it was satisfactory.

Q. According to your memorandum the service was satisfactory on April 11 of 1955, wasn't it?

A. In 1955, yes, but I know many times it wasn't.

Q. You didn't put that in the memorandum, though?

A. No.

By Mr. McConnell: That is all I have to ask him.

Redirect Examination by Mr. Thompson.

Q. I will ask a few questions and see if I can get you to your train, Mr. Whittington.

Just before the recess the question was put to you as to whether or not you had seen any profit and loss standards of the Keeshin people.

A. Parmelee—he said Parmelee.

1662 Q. Well, anyway, what is your answer?

A. My answer is that I have never seen a Parmelee profit and loss, but I have seen the Keeshin profit and loss for the last four years.

Q. All right; I think you misspoke yourself before.

A. I thought Mr. McConnell said—

1663 By Mr. Thompson: I will ask to have this document marked Defendants' Exhibit 29 for identification.

(Thereupon the said document was marked Defendants' Exhibit 29 for identification.)

By Mr. Thompson:

Q. Looking at Defendants' Exhibit 29 for identification, is that the memorandum that you made and the conversation you had with Mr. Baird in April 1955?

A. Yes, sir, that is it.

Q. What is the date of it?

A. The date of it is April 21, 1955.

Q. Was that memorandum made by you after you got back from New York?

A. I can't tell whether it was made after I got back. I dictated probably to my secretary on the train, and put it in as a matter of record in the file.

Q. Is it a regular practice of yours to make memorandum for the file?

A. Yes, sir.

Q. Is it in the ordinary course of business that
1664 you have such memorandum made for the file?

A. Yes, sir.

Q. And this is part of the file of the Baltimore and Ohio Railroad Company?

A. That is correct, sir.

Q. Looking at this document here which you couldn't identify, but which I will agree with counsel was identified by Mr. Nelson as some notes made by him, is that any memorandum for the file made in the regular form and regular course of business?

A. We would never make it in Baltimore, and I don't know when I was in Chicago that we made such memorandums, unless we typed it out and put it in the file.

Q. That is dated January 5, 1955. Did you have any bids at that time other than the Keeshin bid of December 15, 1954?

A. We did not.

Q. There was nothing to compare the Keeshin bid with then?

Q. And there was no Parmelee bid until the middle of March 1955?

A. That is correct, sir.

1665 Q. I call your attention to Plaintiff's Exhibit 25. You have already said that so far as it goes, it is

an accurate statement. Is that supposed to be or does it purport to be a complete transcript of all that happened at this meeting of May 19, 1955?

A. It is not this memorandum that was prepared following the meeting. It is not a transcript of the meeting.

Q. Now then, under the words "J. L. Keeshin", which is the third paragraph on the first page, is there a reference to the Keeshin written proposal incorporated in this memorandum?

A. Yes, sir.

Q. And that written proposal of Mr. Keeshin said it would cost more than $500,000 to provide the equipment he contemplated providing?

A. Yes.

By Mr. McConnell: I object to counsel testifying to what the written agreement said.

By the Witness: I testified to that previously.

By Mr. Thompson: The written agreement is in 1666 evidence.

By Mr. McConnell: I know. I just don't like your version of it, that is all.

By Mr. Thompson: Of course, you wouldn't.

By Mr. McConnell: I just like to stick to the evidence and not your editorialized comments.

By Mr. Thompson:

Q. Anyway, it was in Mr. Keeshin's original bid, wasn't it which is right in front of you?

A. Yes, sir.

Q. Now then, calling your attention to what you were not shown when you were being examined about Plaintiff's Exhibit 30, which is the memorandum signed with your name in typewriting on May 20, 1955, I show you Defendants' Exhibit 29. Is that the memorandum to which you were referring as having come from Mr. Nelson to you?

A. That is the memorandum.

Q. And is the content of the one the same as the content of the other?

A. It is identical with the last paragraph being the P.S. on Mr. Nelson's memorandum.

Q. Moved up into the body of your memorandum?

A. That is correct.

1667 Q. All right. Then the notes here made in red, so it is said, though it isn't red here, but anyway, the last two figures, Keeshin, $1.25 in 1958 and $1.27 in 1959.

Now is there a footnote to those two figures showing that it is nothing but a computation?

A. Down at the bottom here?

Q. No.

A. Oh, that asterisk says "Based on possible ten cent wage increase," with an asterisk which says "On those two years it is based on possible ten cent wage increase."

Q. In other words, you were making a memorandum to yourself?

A. For my own reference in the future, yes.

Q. And that if there was a ten cent wage increase in each year, it would come to those figures?

A. That is correct.

By Mr. Thompson: We had marked on the identification of the document by Mr. Anderson, when he was on the stand in our cross examination of him, Defendants' Exhibit 1, which is the memorandum from Anderson to Duffy of April 27, 1954.

1668 We offer it in evidence.

By Mr. McConnell: I have no objection.

By the Court: It is received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 1.)

By Mr. Thompson: I offer in evidence Defendants' Exhibit 29, which is a memorandum of the Whittington-Baird conference on April 21, 1955.

By Mr. McConnell: No objection to that.

By the Court: No objection?

By Mr. McConnell: No objection, your Honor.

By the Court: It may be received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 29.)

By Mr. Thompson: I offer in evidence certified copy of complaint in the Superior Court of Cook County, which speaks for itself.

By Mr. McConnell: I object to that on this issue.

By Mr. Thompson: I will ask to have it marked 1669 as Defendants' Exhibit 30 for identification.

(Thereupon said document was marked as Defendants' Exhibit No. 30 for identification.)

By the Court: I will reserve my ruling. I want to hear a little more about it. I don't know what it is.

By Mr. Thompson: You can look at it yourself, your Honor.

By the Court: Yes. I will reserve my ruling. I don't know what that is.

By Mr. Thompson: That is all.

By Mr. McConnell: I have a couple of questions.

Recross Examination by Mr. McConnell.

Q. Judge Thompson has referred to your note here based on possible ten cent wage increase with the increases on the Keeshin coupon rate. Now in this memorandum, the Keeshin proposal based on that assumption, was $1.27 for the year July 1st, 1959 to June 30, 1960. Do you

know what the present coupon rate is?

1670 A. Well, it depends on the date that is there. I guess it is $1.67 now, if it is the last year. I wouldn't know whether that is the last year of the contract.

Q. $1.27?

A. $1.27.

Q. It is $1.27, isn't it?

A. If that is the last year, yes.

Q. So that the figure that is shown here in your memorandum is actually the figure you had to pay?

A. We had to pay based on the wage increase that was granted.

1671 Q. Now I want to call your attention to the contract, which was signed between the Keeshin Company and the twenty-one railroads, and ask you to tell us, if you will, what the rate for the coupon is for the fourth and the fifth year in the Keeshin contract?

A. $1.25 and $1.27.

Q. So when you told us this morning that those rates were not in the contract, you were mistaken, is that right?

A. No, I wasn't mistaken.

Q. Didn't you say that those rates were not included in the contract?

A. We made a contract for the three years on a definite commitment from him of $1.20, $1.22 and $1.23, and a further commitment that if he would have to grant an increase in the fourth and fifth years, he would make his rate no higher than one cent for every five cents he had to give up, to a maximum of ten cents, which would have been two cents for the fourth and two cents more for the fifth.

Q. That is what it says in the contract, doesn't it?

A. That is what he did.

1672 Q. $1.25 and $1.27?

A. That is correct.

By Mr. McConnell: I have no further questions.

Redirect Examination by Mr. Thompson.

Q. At the time this contract was finally executed on September 19, 1955, do you know that Mr. Keeshin by that time had a six-year contract with his labor so he knew what the figure was going to be?

A. That is correct.

By Mr. Thompson: That is all.

By Mr. McConnell: I have no further questions.

(Witness excused.)

By Mr. Meserow: I will call Mr. Bayr.

EDWARD BAYR, called as a witness on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Meserow.

Q. What is your name, please?

1673 A. Edward Bayr.

Q. And your address, Mr. Bayr?

A. 400 West Kenzie Street.

Q. What is your present occupation?

A. General manager, Railroad Transfer Service, Inc.

Q. And that is the company owned by Mr. Keeshin?

A. That is right.

Q. How long have you held that position?

A. Since May 1st, 1958.

Q. When did you first come with the Railroad Transfer Service?

A. Two weeks prior to October 1st, 1955.

Q. And October 1st, 1955, is the date that they started their operations of interstation transfer?

A. That is correct.

Q. Now prior to that time, prior to the two weeks in September before you started work for the Railroad Transfer Service, where were you employed?

A. Parmelee Transportation Company.

Q. In what capacity?

A. Superintendent.

Q. How long had you been employed by Parmelee Transportation Company?

1674 A. Twenty-seven years.

Q. In what various capacities?

A. Eight years in the office; six years as a driver; eight years as a passenger agent; and five years as a superintendent.

Q. And during your employment with Parmelee Transportation Company, you had on occasion to drive, inspect and observe their equipment, didn't you?

A. That is true.

Q. Generally what were the types of equipment that they used in 1955 for interstation transfer?

A. Well, they had a cab type vehicle, I believe, that was a seven-passenger car and they also had a twelve-passenger vehicle.

Q. In your capacity as general manager of Railroad Transfer Service do you purchase the equipment for Railroad Transfer Service?

A. Yes, I do.

Q. You are familiar with their type of equipment that they have?

A. That is true.

Q. Now originally in the station transfer, they used station wagons, is that correct?

A. Correct.

1675 Q. What make?

A. Ford.

Q. Were they ordinary station wagons that you would purchase in a dealer's place of business, or were they specially built?

A. They were specially built, all heavy duty equipment; heavy duty axles and clutch, automatic transmissions, fronts, everything that we could possibly have heavy duty on these vehicles, we did.

1676 Q. In other words, they were specially built for Railroad Transfer Service, is that correct?

A. That is correct.

Q. I show you what I will have marked as Defendants' Exhibit No. 31.

(Thereupon said document was marked as Defendants' Exhibit No. 31 for identification.)

By Mr. Meserow:

Q. And I ask you what this is.

A. This is the photo of our units loading at the Union Station. That shows one of the new Chevrolets and one of our new Plymouth conversions.

Q. Isn't this the original station wagon that you used?

A. No, it is not the original station wagon.

Q. What is this?

A. A Plymouth we converted last year.

Q. Does that have a glass partition in between the baggage compartment and the seating of the passengers?

A. Yes, it does.

Q. The original station wagons, did they have a glass compartment?

A. Not the original.

1677 Q. When did you install or have installed the glass compartment?

By Mr. McConnell: That assumes that he did install them.

By Mr. Meserow:

Q. Were there any installed in the original station wagons?

A. Not glass partitions, no.

Q. What kind of partitions?

A. There was a metal partition that kept the baggage from shifting forward onto the passengers.

Q. In the summertime did that keep the cold air from the passenger compartment?

A. You talk about the summertime now. In the summertime we started to put these partitions into these vehicles, in the summer of 1956.

Q. In the summer of 1956?

A. That is right.

Q. When you had them completed, did that keep the cool air in the air conditioned passenger compartment in there and did not let it get out to the baggage compartment?

A. That is right.

Q. And in the cold air it kept the cold air out?

1678 A. That is right.

Back with these partitions here around November or December of 1955 we started to order out the partitions for the units we had in service.

Q. Mr. Bayr, is it true that all of the passenger transfer equipment of Railroad Transfer Service that you used from October 1, 1955 to date has been air conditioned?

A. That is true.

Q. And continuously air conditioned?

A. That is true.

Q. And they all have two-way radio dispatch equipment?

A. All two-way radio dispatch.

Q. And that includes the tractors for the transferring of baggage, is that right?

A. Yes.

Q. They are all heated for winter travel, aren't they?

A. Yes.

By Mr. Meserow: Mark these as Defendants' Exhibits 32 through 41, for identification.

(Thereupon said documents were marked, respectively, Defendants' Exhibits Nos. 32 through 41, both inclusive, for identification.)

1679 By Mr. Meserow:

Q. I show you a picture marked as Defendants' Exhibit No. 32 and ask you what that is.

A. This is a Ford station wagon that has been converted from a six to a twelve passenger limousine.

1680 Q. Is this the air conditioning unit on top?

A. Correct. That is not the air conditioning unit. The unit itself is inside the car. This is a roof condenser.

Q. Are these vehicles in operation at the present time?

A. Yes, some of them are.

Q. By the way, Mr. Bayr, have you replaced your equipment in the last, since October 1, 1955, within a thirty-month period with new equipment?

A. We have replaced the equipment. I think we first started to replace in the early part of 1956. We ordered some of these station wagons to be converted to twelve-passenger, and then we ordered equipment in 1957, again in 1958.

We never waited for the thirty-month period to replace equipment. We are constantly replacing equipment with better equipment, more modernly designed.

Q. Did you ever use Volkswagens in the beginning of your operation?

A. Yes, we did.

Q. How long did you use them?

A. I think for probably two and a half months.

1681 Q. Did you find them unsatisfactory?

A. We did as far as air conditioning. There was no way to air condition these units properly.

Q. They were used in the cool months of the year after October to the end of December?

A. Yes, and we disposed of them in the month of December.

Q. What was the average mileage on these Volkswagens when you disposed of them, that is per vehicle?

A. I would say it would average four or five hundred miles.

Q. Not more?

A. Not more.

Q. Did you ever use school buses?

A. We never used school buses.

Q. I will show you Defendants' Exhibit No. 33 and ask you what that is.

A. That is a photo of a 21-passenger coachette made by the Ford Company, air conditioned, with a two-way radio, baggage bulkhead in the back.

Q. Is that used by your company at the present time?

A. Yes, it is.

Q. All right. I show you Defendants' Exhibit No.

1682 34 and ask you what that is.

A. This is a picture of our tractors and trailers now in use for the handling of baggage between stations and city delivery.

Q. Are those radio-dispatched?

A. These are radio-dispatched, two-way radio, fully equipped.

Q. I show you Defendants' Exhibit No. 35 and ask you what that is.

A. This is a picture of a panel truck we use for city delivery with an automatic tailgate lift, with a two-way radio, and we have two of these in our service.

Q. I show you Defendants' Exhibit No. 36 and ask you what that is a picture of.

A. This is a group photo taken on the lake front showing all the different types of equipment we had. It shows the six-passenger, the twelve-passenger, the twenty-one passenger coachette, the panel truck and the tractor and trailer.

Q. I show you Defendants' Exhibit No. 37 and ask you where that was taken.

A. This picture was taken at 1214 West Monroe Street, our garage. It shows all the latest types of equip-
1683 ment we have, our new fifteen-passenger Chevrolets, fully equipped, with radio, heaters, air conditioned and also a new twenty-five passenger Chevrolet bus, plus our coachettes.

Q. Mr. Bayr,—

By Mr. McConnell: I am sure all of that equipment isn't on that picture, and I move to strike out his description of the equipment. The question is what the picture showed.

By Mr. Meserow:

Q. Just tell what this picture shows.

A. This picture shows equipment in our garage at 1214 West Monroe.

Q. Mr. Bayr, I notice on one of these vehicles the Civil Defense insignia. Is the Civil Defense insignia on all of your vehicles?

A. Yes, all of our vehicles have the Civil Defense insignia.

1684 Q. Is it true that the Railroad Transfer Service has an agreement with the Illinois Civil Defense Director?

A. Yes.

Q. Whereby in the event of an emergency all of the equipment and the drivers are made available to the Civil Defense?

A. All of our personnel and equipment is pledged to Civil Defense.

Q. In the event of an emergency?

A. In the event of a national emergency, that is right.

Q. I show you Defendants' Exhibit No. 38 and ask you what that is.

A. This is a picture of our Jeep service truck with the snowplow attached, two-way radio, and so forth.

Q. Do you have occasion to plow snow in the wintertime?

A. Yes, we do.

Q. Where?

A. Around the depots, the various depots.

Q. What else do you do at the depots to alleviate the through traffic?

A. In what way?

1685 Q. I mean do you do anything else besides plow there when it is necessary?

A. Yes, we sprinkle salt around, and so forth.

Q. You have done that?

A. Yes.

Q. In the heavy snows of last winter, how much salt did you sprinkle, would you say?

By Mr. McConnell: I don't think we have any controversy about sprinkling salt in this case.

By the Court: Yes, sustained.

By Mr. Meserow:

Q. I show you Defendants' Exhibit No. 39 and I ask you what that is.

A. This is a picture showing one of our units loading at Dearborn Station, one of our new Chevrolet units.

Q. Is that a new unit?

A. Yes.

Q. How many passengers?

A. Fifteen passengers.

Q. Does that have automatic transmission?

A. Yes, it does.

Q. All of your vehicles?

A. All of our vehicles have automatic transmis-
1686 sion, power brakes, power steering.

Q. And two-way radio?

A. And the air conditioning, yes.

Q. Does Railroad Transfer Service employ agents and stewardesses at the stations?

A. Yes, they do.

Q. About how many agents, male agents do you have at the stations?

A. At the present time?

Q. Yes.

A. Seventeen.

Q. On October 1, 1955 how many stewardesses did you employ at the beginning of the operation?

A. Fifteen.

Q. Those are female stewardesses?

A. Female stewardesses, yes.

By Mr. McConnell: I never heard of a male stewardess.

By Mr. Meserow:

Q. What are the duties of the agents at the stations?

A. They assist the passengers and assist in loading, collecting coupons, issuing boarding passes, dispatching the units.

Q. What are the duties of the stewardesses, the
1687 female ones?

A. We have booths at the various depots which these girls attend, and the passengers come up to them

at the depots and present their through tickets and they detach the coupon which is good for the ride from station to station and issue a white boarding pass and direct the passengers to where our vehicles load and assist the people in whichever way they can, whatever way they can.

Q. Do you, as general manager, know of any particular instances in which some of these stewardesses did some outstanding service for the traveling public?

A. We have many letters of commendation.

1688 Q. I mean, do you know of any particular instances where any of the stewardesses have performed some such service?

A. Yes, our stewardesses have helped people cross town, have helped people with children, people that have been injured in one way or another, either in our vehicles or on the premises of the depots, and they have assisted them.

By Mr. McConnell: I would like to hear about that incident where they were injured in his vehicle.

By Mr. Meserow: You go into it if you want.

By Mr. Meserow:

Q. Did you ever have occasion to call, to have these stewardesses or some of your agents call pulmotor squads?

A. Yes.

Q. Were they called by what, your radio?

A. Our two-way radio.

Q. Do you also have the stewardesses or agents arranging for wheel chairs for infirm people at the receiving station?

A. Via two-way radio, yes.

1689 Q. And do you also cooperate with the Travelers' Aid?

Q. I will show you Defendants' Exhibit No. 40 and ask you if that is a—or rather, what that is.

A. This was taken at the Illinois Central station, and it shows one of our stewardesses working at the booth there to provide boarding passes for the passengers.

Q. I show you Defendants' Exhibit No. 41 and ask you what that is.

A. This is a picture of our stewardesses taken in the month of October of 1955 showing some of the stewardesses we employ.

Q. They are all uniformed, aren't they?

A. All uniformed, yes.

Q. Mr. Bayr, these pictures of equipment that I have shown you, you assisted or directed and inspected and made examinations to determine whether or not these should be purchased, is that correct?

A. That is correct.

Q. And to whom would you report?

A. Mr. Keeshin.

Q. So that you are familiar with this type of 1690 vehicle, aren't you?

A. That is right.

Q. These are a true portrayal of the equipment that you had purchased and are now using in operation for the Railroad Transfer Service?

A. That is right.

By Mr. Meserow: I would like to offer in evidence at this time, if the Court please, for the inspection of the jury, the defendants' documents—

By the Court: Have counsel look at them first.

By Mr. Meserow: Defendants' Exhibits 31 to 41, both inclusive.

By Mr. McConnell: I am going to object to these. I want somebody to cross-examine. That is all. This man didn't take the pictures. We have no dates, and we didn't know when they were taken.

By the Court: You may cross-examine.

By Mr. McConnell: We can't cross-examine him. He didn't take the pictures. I want somebody who took them.

By the Court: He has testified they are true and
1691 correct as of the date they were taken, and that he is familiar with them.

By Mr. McConnell: We don't know when they were taken.

By the Court: You can ask him.

By Mr. McConnell: He doesn't know either, I don't imagine. He didn't take them. There has been no foundation laid for them, and I object.

By Mr. Meserow: He did testify as to the models of these vehicles.

By the Court: Objection overruled. They may be received in evidence.

(Said documents, so offered and received in evidence, were marked Defendants' Exhibits 31 through 41, inclusive.)

1692 By Mr. Meserow: May I show them to the jury, your Honor?

By the Court: Yes.

(Thereupon the exhibits were handed to the jury.)

By Mr. Meserow: I have no more questions on direct, your Honor.

By the Court: Do any other defendants have any questions? If not, you may cross examine.

1693 *Cross Examination by Mr. McConnell.*

Q. Do you know when these pictures were taken?

A. Some in 1955; some in 1956.

Q. Well, I am going to give you the batch of them and let you tell us by the exhibit numbers which were

taken in 1955 and which were taken in 1956.

A. Forty-one, 1955, that is my recollection—

Q. All right, let's start with 1941—

By Mr. Keating: Object to 1941. The witness didn't say that.

By the Court: He means Exhibit 41.

By Mr. McConnell:

Q. How many of these girls are still with your company?

A. Three out of the group shown there.

Q. Three of the eleven girls are still with the company?

A. That is right.

Q. And they are now four years older?

A. That is right.

Q. How about that cab or whatever it is? One of them sitting in the cab. Is that piece of equipment still with you?

A. I can't tell. I can't see the number. I doubt 1694 it.

By the Court: Can you hear back there? Speak a little louder, please.

By Mr. McConnell:

Q. Well, how much of that equipment—

By Mr. Thompson: Repeat the answer, please.

By Mr. McConnell: He said he doesn't know whether it is or isn't.

By the Witness: You can't see the vehicle. The vehicle is blocked out, all except one door.

By Mr. McConnell:

Q. So you don't know whether you still have got it?

A. I don't know what vehicle it is.

Q. You don't know whether you have still got it?

A. No, I don't.

Q. And you have got three of the girls in the picture?

A. That is right.

Q. And they are four years older. All right. Are the vehicles all four years older, too?

A. No, they are not.

Q. Well, which ones are four years older and 1695 which ones three?

A. This may be a 1955 vehicle that we turned in to the baggage department for the baggage sup[illegible]sor's use. That is why, when I say I dont know w[illegible] car number this is, because I don't know what car it is, period.

Q. It might be, but you don't know?

A. I don't know. We have one—

Q. That takes care of that vehicle, doesn't it?

A. Yes, it does.

By Mr. Mescrow: Speak a little louder, Mr. Bayr. We can't hear you.

By Mr. McConnell:

Q. Can you tell us, well, all those vehicles, the youngest of them is in 1956, isn't that right?

A. That is right.

Q. And you have got them yet? Are they still with your company?

A. We have one 1956 vehicle.

Q. So none of the rest of them are with you any more?

A. We don't use it in service. We haven't been using it in service.

Q. How many vehicles do you show you have 1696 got there by those pictures?

A. You mean year?

Q. How many? The number.

A. Oh, number.

Q. Let me get at it this way. You are not duplicating

them here, are you? You are not taking a picture of the same vehicle more than once?

A. No, we are not.

Q. So that each time you have a picture, it is a different vehicle?

A. Correct.

Q. But you have got them in two different years, 1955 and 1956?

A. 1955, 1956—some 1957's and '59's.

Q. Can you tell us how many of them you now have working for the company?

A. The vehicles?

Q. Yes, of those pictures.

A. We have fifty pieces of power—

Q. I didn't ask you that. I am asking you of the pictures that you produced here, how many of them are still in operation with the company?

A. I will look at the pictures again. I would say three.

1697 Q. Can you identify those by number? I mean exhibit number.

A. Exhibit 32, Exhibit 36.

Q. Let me see those two exhibits.

A. These wagons were discontinued. This wagon was discontinued—

By Mr. Thompson: Just a minute, please, Mr. Witness. We can't hear you. The jury wants to hear this.

By Mr. McConnell: I haven't asked him any question yet except to see the two exhibits, 36 and 33, is that it?

By the Witness: 32.

By Mr. McConnell:

Q. Exhibit 32 is a picture of two Ford station wagons?

A. That is right.

Q. And you have still got them?

A. No. You asked me--rephrase your original question, if you will, please.

Q. No, I am not rephrasing the original question. I asked you a question and you gave me an answer, and you said, of the pictures you had here, you said these three, or these two pictures represented all that equipment that you still have got in use.

1698 Now, do you want to change that answer?

A. Yes, I do. Exhibit 41 also, to the best of my knowledge, this unit is not in use. That would be the 1955 vehicle.

Q. I asked you which was still in use.

By Mr. Thompson: If the Court please, if he would let the witness take each document separately and quit this wholesale examination, then we would get some intelligent answers. He could say each one is in use—

By the Witness: Would it be better if I told the type of equipment we now have?

By Mr. McConnell: I think I have a right to examine the witness.

By the Court: You have a right to examine the witness.

By Mr. McConnell: I don't think I have to take directions from Judge Thompson.

By the Court: I think he identified those three pictures as being presently in use.

By Mr. McConnell: I understood that, and so did everybody else, except Judge Thompson.

By Mr. Meserow: Now the witness stated that they are not in use.

1699 By Mr. McConnell:

Q. Is that equipment in use?

A. To the best of my knowledge this equipment here, some of this equipment showing in this photo here—

By Mr. Thompson: What is the number, please?

By the Witness:

A. (Continuing) No. 36, the equipment shown in No. 32, and the equipment in 41 is not in use.

By Mr. McConnell:

Q. Not in use?

A. Right.

Q. All right.

Now the balance, is all the rest of the equipment in these pictures in use at the present time?

A. Yes.

Q. I show you a document marked for identification Defendants' Exhibit 37, and ask you to tell us, if you will, what that equipment is.

A. This shows a '59 Chevrolet, 15-passenger units; 25-passenger Chevrolet coachette; 21-passenger Ford coachette; a 1958 passenger Ford, 12-passenger unit.

In the background two straight trucks.

1700 Q. How many of the '59 Fords are there?

A. No '59 Fords. '59 Chevrolets.

Q. How many of the '59 Chevrolets?

A. There are five shown here.

Q. Do you know what they cost new?

A. Yes, I do.

Q. What do they cost new?

A. The complete unit, with air conditioning?

Q. What you have got there in your picture. I dont know what is in it.

A. $7,800, close. I will take a guess at $7,800, very close to it.

Q. Are you just guessing about this or do you know?

A. No, I am not guessing. It will run around $7,800.

Q. You have five of them?

A. That is right.

Q. What are the other makes?

A. Fords.

Q. How many Fords?

A. Well, we show here about ten or twelve Fords in the photo.

Q. Can't you count them?

A. It is pretty hard from the photo. The photo is taken from a distance.

1701 Q. Well, do you know how many you have?

A. Yes, I do.

Q. How many?

A. Eighteen.

Q. Eighteen of those Fords. What are they?

A. Twelve-passenger conversions, we call them.

Q. Conversions?

A. Conversions.

Q. What do they cost?

A. $5,800 apiece.

Q. What else have you got there?

A. Twenty-five passenger Chevrolet coachette.

Q. How many have you got of them?

A. One.

Q. One?

A. Just one.

Q. How much did that cost?

A. I would say in the neighborhood of $9,000 fully air conditioned.

Q. $9,000?

A. $9,000.

Q. You say air conditioned. They are fully air conditioned?

A. Oh, yes, but I mean, we buy the units and we
1702 have the air conditioning put in, with the air conditioning fully equipped.

Q. All right. Let's get through the inventory. What else have you got?

A. Coachette.

Q. One coachette? Is that the one you have already told us about?

A. No. Twenty-one passenger. This is a Ford coachette.

Q. What did you pay for that?

A. That cost us when we purchased it in the neighborhood of $8,000.

Q. O.K. What else?

By Mr. Thompson: I can't tell from the questions, your Honor—I just don't want the confusion—I can't tell whether he is telling how many are in the picture or how many in the service. I just don't know, and the questions don't indicate.

By Mr. McConnell: I think it is perfectly clear to everybody but you, Judge, that I am asking how much of this equipment which he has got in the picture he has.

By Mr. Thompson: And you ask him how many 1703 more he has got sometimes, and sometimes you are not.

By Mr. McConnell: No, I am asking how many he is using over there in that operation. He understands.

By Mr. McConnell:

Q. You understand what I am talking about?

A. Yes. You are trying to find out the number of vehicles.

Q. Certainly. There is no problem. Now, is there anything else?

A. That just about covers it, what is shown here.

Q. How many trailers have you got?

A. At the present time?

Q. Yes.

A. Twenty-one trailers.

Q. How much do they cost?

A. Oh, they have been depreciated over the years. I couldn't tell you. The original cost of the trailers, I couldn't tell you.

Q. They are the original equipment, are they, being depreciated over the years?

A. I imagine they are.

Q. Probably depreciated down to zero now, aren't they?

1704 A. I couldn't say.

Q. You don't know what they cost in the beginning?

A. No, I don't.

By the Court: May we recess now? I want the jurors to get their trains.

Have a nice evening. Tomorrow morning at 10:00 o'clock and don't discuss it with anyone, please.

(Thereupon the following proceedings were had outside the presence and hearing of the jury:)

By the Court: I have a long call in the morning, so 10:30 for you lawyers, please.

(Thereupon an adjournment was taken to 10:30 o'clock, a.m., of the following day, May 6, 1960.)

1705 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Friday, May 6, 1960,
10:30 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

1706 Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1707 And thereupon the following further proceedings were had herein:

By the Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin, et al. Case on trial.

By the Court: Bring out the jury.

(And thereupon the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: Good morning, ladies and gentlemen. Proceed, please.

EDWARD BAYR, called as a witness herein on behalf of the Defendants, having been previously duly sworn, resumed the stand and testified further as follows:

By the Court: If I recall, you were on the inventory, reviewing it.

By Mr. McConnell: That is right.

Cross Examination (Resumed) by Mr. McConnell.

Q. Have we covered all the items now of equipment used by your transfer company?

1708 A. From the photos you showed?

Q. Are there any others you are operating?

A. Yes, we have other pieces of equipment.

Q. You gave us five of the 1959 Chevrolets. You gave eighteen of the Ford 12-passenger conversions, one 25-passenger Chevrolet coachette and one 21-passenger Ford coachette and 21 trailers.

What else have you got?

A. Ten tractors, two straight trucks.

Q. How much are the tractors apiece?

A. I couldn't tell. I wasn't in on the purchase of the tractors.

Q. What else?

A. Two straight trucks. You have that.

Q. How much are the straight trucks?

A. I wasn't in on the purchase of that.

Q. All right. What else?

By the Court: Speak a little louder. You speak rather fast and I would like everybody to hear you. Just speak a little louder and slower.

By Mr. McConnell:

Q. What else?

A. Two Chevrolets carry-alls.

Q. How much do they cost?

1709 A. Approximately $5,600 apiece.

Q. What else?

A. One Plymouth 12-passenger conversion.

Q. How much did that cost?

A. Approximately six thousand dollars.

Q. What else?

A. We have three, six-passenger station wagons used by our supervisors and station personnel.

Q. Those are not used by the public?
A. Not used by the public, no.
Q. How much do they cost?
A. Thirty-one or thirty-two hundred dollars apiece.
Q. Anything else?
A. Did I mention a Reo, a 29-passenger?
Q. A Reo?
A. Yes, a Reo 29-passenger.
Q. One of those?
A. That is right.
Q. How much do they cost?
A. Seventeen thousand dollars.
Q. Is that R-e-o?
A. R-e-o.
Q. All right; anything else?
A. Do we show the twenty-one trailers?
Q. Yes, twenty-one trailers.
1710 A. One Jeep, Willis Jeep, a service truck, three thousand dollars. That is the equipment we have at the present time.
1711 Q. How many employees do you have altogether?
A. 95.
Q. What are they? Just give the categories, if you will. Drivers, first. How many drivers?
A. I think at the present time we have 40 passenger drivers; 12 tractor men; 17 passenger agents; nine stewardesses; three supervisors; four garage men; office personnel—
Q. How many?
A. Nine.
Q. Is that all?
Q. Garage manager; baggage superintendent; four radio—wait a minute—five radio dispatchers.
That is all I can think of at the present time.
Q. Now turning to this air conditioning equipment,

was the air conditioning equipment which you put on when you started this service in 1955, was that built in at the factory or was that something that you people installed?

A. That was built in at the factory.

Q. How much did those units cost?

A. In the neighborhood of $360.

Q. Apiece?

A. Apiece.

1712 Q. How many of them did you have?

A. Approximately 50.

Q. So that equipment cost you approximately $18,000?

A. Whatever it figures up to.

Q. Now did you change, when you turned in equipment and replaced it, did you take the air conditioning unit off of the old equipment and put it on the new?

A. No, we haven't.

By Mr. Meserow: Please speak up, Mr. Bayr, so the jury can hear you.

By Mr. McConnell:

Q. In order to operate this air conditioning equipment, do you have to keep your windows closed?

A. Yes, you do.

Q. Did you have any trouble with the equipment in 1955?

A. No, I can't say we did, not in 1955.

Q. How about 1956?

A. 1956, no.

Q. Any other year you had trouble with it?

A. 1958, we had an overheating problem.

Q. What was that problem?

A. That was from core sand in the radiators and the blocks of the motors.

1713 Q. Any other trouble?

A. That is all. May I say that that was remedied by the Ford Motor Company?

Q. You can say it if you want.

A. All right.

Q. How long did this trouble last before Ford remedied it?

A. I would say about 30 days.

Q. What did you have to do to remedy it, send the motor blocks into the Ford Motor Company?

A. Well, the Singer Motor Company took the blocks and radiators down, had them recorded, and the sand taken out, and that remedied the situation.

1714 Q. You can't recall any trouble that you had in 1955 and 1956?

A. No, I cannot.

Q. Now you told us that you used to work for the Parmelee Company?

A. Yes, I did.

Q. At one time. When were you hired by Mr. Keeshin's company?

A. Two weeks prior to October 1st, 1955.

Q. October 1st, 1955, was the time when Parmelee was giving up the contract?

A. Correct.

Q. Do you own a garage, your company?

A. No, sir, we lease a garage.

Q. Who do you lease it from?

A. I don't recall their name at the time.

Q. When you were working for Parmelee, did they have their own garage?

A. Yes, they did.

By the Court: Pardon me, please.

(And thereupon the Court gave attention to other matters, after which the following further proceedings were had herein:)

1715 By the Court: I am sorry, Mr. McConnell.

By Mr. McConnell:

Q. Do you know how much this radio-dispatching equipment cost?

A. The units in the cars themselves, I believe $650 would be the cost, plus the units for the base stations. We have two base stations, and the charge for our tower on top of the Pittsfield Building.

1716 Q. How many of them did you have of the $650 units?

A. We started the operation in 1955, and we got 60. We bought—not bought, pardon me, but at the start of the operation we had 80 units that covered the fleet.

Q. Is that the top figure for all time since, 80 units?

A. We still have 80 units, yes, sir.

Q. Where do you sort your baggage? What space do you use for that?

A. Depot baggage are you referring to, or city delivery baggage?

Q. Either, or both.

A. Our city delivery baggage is sorted at a platform at the south end of the La Salle Street Station on Harrison Street.

The depot baggage is sorted at the various depots.

Q. This space at the La Salle Street Station, do you pay rent for that?

A. Yes, we do.

Q. Do you know what you pay?

A. I don't know the approximate cost of that.

Q. Parmelee had its own baggage sorting station,

1717 did it not, or space?

A. With reference to the city delivery, they had their own platform, yes.

Q. Where was that?

A. 300 North DesPlaines.

Q. Do you know how many vehicles Parmelee was using at the time it discontinued the service?

A. No, I couldn't say.

By Mr. McConnell: Mark this for identification as Plaintiff's Exhibit No. 119.

(Thereupon said document was marked Plaintiff's Exhibit No. 119 for identification.)

By Mr. McConnell:

Q. I show you a document which has been marked for identification as Plaintiff's Exhibit No. 119 and call your attention to this item here, and ask you if that refreshes your recollection as to what the rent is on that sorting station?

By Mr. Thompson: We object to that as immaterial.

By the Court: Rental on what?

By Mr. McConnell: The baggage sorting.

By Mr. Meserow: Your Honor, I object to that 1718 as not being material to the issue. Whatever the rent that is being paid, or the amount of it doesn't make any difference.

By Mr. McConnell: The question is a comparison of service.

By Mr. Meserow: He said he didn't know.

By Mr. McConnell: And now I am asking to refresh his recollection.

By the Court: He may answer.

By Mr. Meserow. May I see the exhibit you marked?

By Mr. McConnell: Certainly, you can look at it.

By the Witness:

A. No.

By Mr. McConnell:

Q. It doesn't refresh your recollection?

A. No.

By Mr. McConnell: I have no further questions of the witness.

By Mr. Meserow: Your Honor, I have a few questions on direct that I wanted to ask.

Redirect Examination by Mr. Meserow.

Q. Mr. Bayr, I believe in your cross examination you mentioned that you have one coachette, is that correct, in operation now?

A. No.

Q. How many do you have?

A. Six Ford coachettes and one Chevrolet coachette.

Q. Let's clarify this entire list of equipment for the record.

Can you tell us how much equipment you have at the present time in operation of the Railroad Transfer Service? If you don't know, if you want to refresh your recollection, do you have some document with you or list that you might have made up?

1720 A. Yes; we have seventy-five pieces in toto of equipment, forty-one in the passenger use and thirty-four in the baggage department for handling baggage.

By Mr. McConnell: I object to his testifying from anything unless he has exhausted his recollection.

By the Court: Yes, sustained. Counsel prefaced it by saying, "If you have no memory, if you can't recollect, you may refer to a document."

First, exhaust his recollection.

By Mr. Meserow:

Q. Do you know?

A. Yes.

Q. Then proceed and answer the question.

By the Court: In other words, Mr. Witness, tell them all you know without referring to a document, and if you have exhausted your memory, you may refresh your recollection.

By the Witness:

A. Nineteen Ford 12-passenger station wagons, six

Chevrolet 15-passenger station wagons, three six-
1721 passenger supervisor's cars, one four-door sedan, the safety supervisor's car, two Chevrolet carry-alls, and GMC carry-all, one Plymouth conversion 12-passenger, six coachettes Ford, one coachette Chevrolet, one Reo 29-passenger.

I believe that covers the passenger.

Q. What about the tractors and trailers?

A. Tractors and trailers, we have 21 trailers, 10 tractors, two straight trucks, and we have one Jeep that we use in the garage.

Q. Is that all of your equipment in use at the present time?

A. That is right.

By Mr. McConnell: The same as what it was before, Counsel.

By the Witness: That is right.

By Mr. Meserow:

Q. Do you know the average number of passengers that you transported in 1955 between stations?

A. Per day?

Q. Per day.

A. Over the early period I would say in the neighborhood of four thousand.

Q. What is the average per day at the present time?

1722 A. Between twenty-five and twenty-six hundred, I believe.

Q. In your answer to Mr. McConnell's question about the number of employees, did you include the baggage agents?

A. No, I forgot the baggage agents.

Q. How many baggage agents do you have?

A. Six.

Q. Mr. Bayr, do you have sufficient equipment at the present time and have you had since October 1, 1955, to transport all of the passengers from station to station that were required to be transferred?

A. Yes.

By Mr. McConnell: I object to that as calling for a conclusion.

By the Court: Overruled.

By Mr. Meserow:

Q. What was your answer?

A. Yes, we have sufficient equipment.

Q. During the time you worked for Parmelee in the various capacities and towards the end as a supervisor, did you have occasion to visit at stations when the trains came in, and did you observe the people waiting for the Parmelee vehicles?

1723 A. Yes, I did.

Q. Were there times that the passengers had an extended wait for the Parmelee vehicles to arrive?

By Mr. McConnell: I object to that as leading and suggestive.

By the Court: Yes, sustained.

By Mr. Meserow:

Q. What was the service—will you describe the service for the people that waited for the Parmelee vehicles?

By Mr. McConnell: I want the time and place fixed.

By Mr. Meserow:

Q. (Continuing) At the various stations in your observation in 1955 prior to October 1?

1724 A. Will you repeat that, please?

Q. In your work as supervisor for Parmelee, did you go to the stations?

A. Yes, I did.

Q. Did you see the people getting off the trains and going onto a Parmelee vehicle?

A. Yes.

Q. Did you also observe the fact of whether or not people waited for the Parmelee vehicles?

A. Yes.

Q. How long as a rule did some of them wait?

A. 15 minutes, 30 minutes, or 40 minutes.

Q. How long?

A. 40 minutes.

Q. Some waited as long as 40 minutes?

A. Yes.

Q. Any more than 40, that you know of?

A. Not that I can recollect.

Q. Have you also in your position of general manager of Railroad Transfer Service had occasion to visit the same stations?

A. Yes.

Q. Have you observed the people emerging from the trains?

1725 A. Yes.

Q. Have you observed any people, any passengers, waiting for the Railroad Transfer vehicles?

A. We have had short waits, not of long duration.

Q. How long?

A. Maybe—I would say at the most ten minutes.

Q. That is the most?

A. That is the most.

Q. How do you account for the fact that the Parmelee vehicles, that some of the people had to wait 40 minutes maximum with that, and the Railroad Transfer a maximum of maybe ten minutes?

By Mr. McConnell: I object to that. That calls for a conclusion and argument.

By the Court: Overruled; he may answer.

By the Witness:

A. Radio dispatched vehicles is the answer.

1726 By Mr. Meserow:

Q. In other words, the radio-dispatch, two-way radio, made for faster pickup of the people, correct?

A. That is right.

By Mr. McConnell: I object to the question as leading and suggestive.

By the Court: Yes, Counsel's remarks, interpretation of it may be stricken.

By Mr. Meserow:

Q. How much liability and property damage does Railroad Transfer carry, the insurance?

A. One million dollars.

Q. One million?

A. General liability, yes.

Q. And that is applicable to the public?

A. That is right.

Q. If a person, a friend or a relative comes to meet an incoming passenger at the railroad station and wants to ride in the Railroad Transfer vehicle to the outgoing station to be with their relative or friend, does Railroad Transfer Company make any charge for this guest or friend or relative to travel to the outgoing station?

A. They make no charge for that service. They

1727 give them a courtesy ride.

Q. Did Parmelee make any charge for this type of transfer?

A. Yes, they did.

Q. How much was it?

A. In 1955, it was seventy-five cents.

By Mr. Meserow: No further questions, your Honor.

Recross Examination by Mr. McConnell.

Q. When was it that you saw someone wait forty minutes with Parmelee?

A. On many occasions.

Q. Well, when?

A. I can't exactly give you the exact date.

Q. Can you give us the time?

A. Time? Yes, around between two and three o'clock in the afternoon.

Q. Five years ago?

A. Five years ago.

Q. What station?

A. Union Station.

Q. Any other occasions?

1728 A. Dearborn Station.

Q. When?

A. In the mornings, between seven and eight.

Q. What date?

A. Back in 1955, 1954.

Q. What time of the year? Can you fix a day?

A. I can't say a certain date, no.

Q. Can you say a certain month?

A. During the summer months.

Q. Can you fix it any closer than that?

A. July and August.

Q. Both months?

A. Either month.

Q. What was your job then with Parmelee?

A. Superintendent.

Q. Were you superintending that service?

A. That is right.

Q. This was under your jurisdiction?

A. That is right.

Q. Now, what was the method of calling a vehicle used by Parmelee?

A. Telephone service.

Q. Where did the telephone call go when they wanted a vehicle?

1729 A. It went to 300 North Des Plaines where they had a central dispatch.

Q. How long did it take to get from 300 North Des Plaines to, say, the Union Station?

A. You mean the phone call itself or a vehicle?

Q. Vehicle.

A. Seven minutes.

Q. And you had your own garage with your own vehicles in the garage, did you not?

A. That is right.

Q. Now you say you have had waits with your equipment?

A. Yes, we have.

Q. With Keeshin?

A. Short waits.

Q. What occasioned those waits?

A. What occasioned them?

Q. What occasioned them, yes.

A. Heavy rainfall, heavy traffic in the Loop.

Q. Something that had to do with the vehicle getting there?

A. That is right.

Q. Now, on these waits that you are telling us about in July and August of 1955?

1730 A. Yes.

Q. That was the month or that was the time in which the service was being discontinued by Parmelee and being taken over by Keeshin's company?

A. Keeshin took over on October 1, 1955.

Q. I know, but everybody knew he was taking over in July and August, didn't they, including yourself?

A. I believe so, yes.

Q. Everybody working for Parmelee knew at that time that their service was going to be superseded by Mr. Keeshin's service, isn't that right?

A. This is July and August?

Q. July and August, 1955.

A. There was nothing definite at that time.

1731 Q. Well, you knew it.

A. I didn't know it.

Q. You didn't know it?

A. No, sir, I did not know it at that time. We had seen surveys being made in the various stations. We had seen people around checking on passengers and baggage, et cetera, but that had been done before.

Q. Was there anything different in July and August in the service of Parmelee than there was prior to that time? Was the service better or worse, or what?

A. With Parmelee?

Q. Yes, Parmelee.

A. It was about par for the course.

Q. And that was the company you worked with for how many years?

A. 27 years.

Q. 27 years?

A. That is right.

Q. And you were the supervisor and superintendent?

A. That is right. We had a labor problem.

Q. You had an A.F. of L. union, didn't you?

A. We did.

Q. And you were being superseded by an independent union, is that right?

1732 A. That is right.

Q. Weren't you one of the people who were trying to solicit membership in the independent union from our A.F. of L. union people during that summer?

A. No, I was not.

Q. Were you trying to solicit any of our employees for Mr. Keeshin?

A. I never did.

Q. How many employees of the Parmelee company went with Mr. Keeshin?

A. Approximately, I would say, 50.

Q. Did you talk to any of them about it?

A. Prior to when?

Q. Prior to their going.

A. No, sir, I did not.

Q. Was there some transfer of some kind of union membership at that time of the Parmelee employees?

A. That I couldn't say.

Q. You don't know anything about it?

A. I don't know.

Q. Were you a member of the union?

A. Am I?

Q. No, were you

A. No, I was a superintendent. I couldn't be a 1733 member of the union.

Q. I am just asking you the question.

A. All right. I was not a member of the union.

Q. And these 50 employees who went from Parmelee, including yourself, were the same employees that Mr. Keeshin was going to use?

A. That is right.

Q. How many employees did Parmelee have at that time?

A. I couldn't give the exact number.

Q. What were these employees? Were they drivers, or what?

A. Drivers, stations agents.

Q. All right. How many drivers went with Keeshin?

By Mr. Owens: I will object to this, your Honor. It

has no materiality or relevance, and it is going beyond the scope of the direct examination.

By Mr. McConnell: No, it is not. It has to do with the take-over, what happened.

By the Court: Objection sustained.

By Mr. McConnell: Well, I will have to make an offer of proof, I suppose, outside the presence of the jury. I can't do that now.

By Mr. Owens: I will object to counsel's remark.

1734 By the Court: Pardon me?

By Mr. Owens: I object to counsel's remark as he walked away from the Court.

By the Court: I have no objection to his making an offer of proof. That is all right.

By Mr. McConnell: What is wrong with it? I don't know.

By the Court: I have no objection to it. That is all right.

By Mr. McConnell: I have no further questions of the witness.

By the Court: Anyone else?

You are excused.

(Witness excused.)

By Mr. Thompson: We desire to read briefly from some of the exhibits that are in evidence on behalf of the defendants.

From Defendants' Exhibit 15, we read only the resolution that was adopted by the representatives of the Terminal Lines on January 29, 1954:

"Resolved that a committee consisting of the AT&SF, B&O, C&NW, Illinois Central, New York

1735 Central, Pennsylvania, and the chairman be appointed to make a study of the transfer situation, including various types of operation that can be

devised to definitely meet the needs of the public without increasing the cost to the railroads; report and recommendations to be made to Chicago Terminal Lines for consideration at a later meeting."

1736 Then from Defendants' Exhibit 1, which is a memorandum of April 27, 1954, from Mr. Sloan in Mr. Anderson's name to Mr. Duffy of the Santa Fe:

"Supplementing our memorandum of April 23 regarding Parmelee transfer charges, in advance of the meeting of Chicago Terminal Lines with Mr. Markin of the Parmelee Company, April 26, we advised Chairman Padrick, who was handling the negotiations, that we were not agreeable to retroactive payments, nor to the proposed escalator clause in connection with possible wage increase.

"During the discussion, Mr. Markin advised Chicago Terminal Lines that they had studied all of the savings and changes in service discussed at previous meetings, and had reviewed operations for the first quarter of 1954, and it was their opinion that to break even they would need between $1.32 and $1.35 coupon rate.

"During this discussion, Mr. Markin indicated
1737 they were agreeable to a maximum three-cent escalator clause, the Parmelee Company to absorb any wage increase over nine cents. They hoped to settle for five or six cents, which would mean one and two-thirds cents or two cents increase in coupon rate. Proposal was submitted for coupon rate of $1.20 effective April 1st, with one-cent increase effective July 1st for each three cents of wage increase up to a maximum of three cents.

"We voted against this proposal together with the C&EI and the CB&Q, and endeavored to secure support of other lines in standing firm on $1.20 effective

April 1st, without the escalator clause, but none of the lines present would join us, including the C&EI and the CB&Q.

"Finally, the C&EI and CB&Q voted with the majority, and we were forced to do likewise. At this point the New York Central secured support of majority present to proposal that lines give fur-
1738 ther consideration immediately to meeting demand for retroactive payment if April 1st was not accepted by Mr. Markin.

"Mr. Markin returned to the meeting room and proposal was submitted to him, but he declined to accept it, and indicated he would have to give up the transfer service if the Chicago Terminal lines would not make it retroactive. He was asked to withdraw again to give the terminal lines opportunity to discuss the matter further.

"Proposal was then submitted by the New York Central to authorize retroactive payment of $1.20 to January 1st. Santa Fe and C&EI were the only lines voting in opposition, and as we did not wish to discontinue transfer service in connection with our line, found it necessary to join with the majority. The C&EI also found it inexpedient to stand out against the majority.

"It was decided, however, that before offering to
1739 settle for the full $1.20 retroactive to January 1st, we would offer Parmelee half of the increase or $1.12½, January 1 to March 31, and this proposal was finally accepted by Mr. Markin.

1740 "Final agreement is as follows: $1.12½, January 1—March 31, 1954; $1.20, April 1—June 30, 1955, with three cent maximum escalator clause, July 1—June 30, 1955."

The last paragraph of that is unimportant.

We also read Defendants' Exhibit 18, which is a letter dated September 23, 1954 to Mr. Padrick from Mr. Markin of the Parmelee Transportation Company:

"We wish to advise that we have entered into new wage agreements with the union representing those employees, including drivers, who are engaged in the baggage and passenger interstation transfer operations.

"These agreements are effective July 1, 1954, and terminate June 30, 1955, and necessitate an increase of 5½ cents per hour in the wage rate plus the continuance of an escalator clause which will increase wages proportionately with the increase in the cost of living.

"In accordance with our agreement on April 26,
1741 1954 with the Chicago Terminal Lines wherein the regular coupon rate would be increased a maximum additional amount of three cents with the signing of new labor agreements, basis one cent for each three cent wage increase, we will increase the regular coupon rate from $1.20 to $1.22, effective July 1, 1954."

1742 I read excerpts from the bid of J. L. Keeshin, which is dated December 15, 1954, which is Defendants' Exhibit No. 19:

"We have carefully gone into the requirements in the transferring of passengers and baggage between the various stations as outlined and have arrived at the conclusion that we can effect a faster transfer service of baggage. We also hope to improve on the handling of passengers by having available the latest and most modern vehicles with all the latest safety features and design to afford the passengers safer and more comfortable riding. It is our proposal to

arrange to supply a sufficient number of 20-foot trailers equipped to operate satisfactorily to and from the stations as outlined. This operation commonly known as the shuttle system will result in several transfers of baggage daily between stations. We believe that with this type of service the results will
1743 bring about a considerable improvement in comparison to present-day operations. Because of our contemplated shuttle service we are inclined to believe after a careful analysis that the baggage can generally accompany the passenger on the train on which the passenger is scheduled to depart. With regard to transporting passengers between stations, we will purchase a large fleet of modern deluxe eight-passenger station wagons equipped with hydromatic drive plus a modern type of air conditioning units with temperature control. Each individual station wagon will be equipped with an RCA mobile radio unit. It is our intention to set up at the LaSalle Street Station a central dispatch system with the necessary radio equipment and manpower to facilitate our control to best utilize the drivers and automotive power. Later this radio control might be extended to our tractor equipment also if that should become neces-
1744 sary. Passenger equipment will have a large type heater to afford the passengers the same kind of winter comfort as the air conditioning units will provide for the summertime travelers. We feel that these kinds of innovations will prove to be an added attraction for the travelers passing through the Chicago gateway. We also believe that the winter and summer comforts and convenience provided by the modern deluxe railroad cars of today should be duplicated as much as possible in the automotive vehicle that is the connecting line between trains. Our study of the

movements of passengers convinces us that a radio control and dispatch will do much to eliminate passenger irritation caused by unnecessary delays, because we are assured it will be able to dispatch the equipment to whatever station may have a peak load of passengers on short notice at any intervals during the working day.

1745 "We think it might also prove of real value in the instance of late arrival trains or under other abnormal and emergency conditions. A further advantage of radio control in our opinion might be that the vehicle and driver will be instantly dispatched to transfer passengers with only a limited time to make the necessary train connections."

We will skip the next two pages, Mr. McConnell.

Page 5:

"Based upon the facts outlined in this letter and other data which we have studied, we are prepared to submit a price of $1.20 per coupon for the transfer of passengers and baggage between stations. This charge per coupon is based on our cost analysis on the factors involved plus our labor contract which will become effective July 1, 1955 through June 30, 1956. If at the end of the first year's union contract there should be a wage increase, we would like to arrange to be protected by an escalator clause to be

1746 as follows: For each five cents' increase in the direct wage costs we would expect to receive a one cent increase per coupon. Because of our complete confidence in the future of the railroad industry and because of their constant desire to improve their equipment and service, we will not hesitate to invest whatever amount of capital may be required so that we may also be a partner in the future growth and progress of that

industry. Our estimate of the amount of capital required to furnish all the facilities and equipment necessary will exceed $500,000. Because of the large amount of capital invested in this operation, to be t provide the type of service and equipment, we feel will best service the needs of all concerned, we are prepared to enter into a contract agreement for a period of five years. We feel that a contract for five years' duration offers both you and us the best opportunity to provide a permanent and satisfactory service and to build a fine and mutually advantageous business relation-
1747 ship."

The last paragraph of the letter is as follows:

"Mr. James U. Snydacker, vice-presidence of the First National Bank of Chicago, can be contacted on any question regarding credit and the financial responsibility of the writer. He will be happy to supply any financial data you may require."

Signed by Mr. Keeshin.

Then on January 15, 1955, Defendants' Exhibit No. 20, the supplemental letter of Mr. Keeshin, which is as follows:

"This will have reference to your letter of January 11, 1955 in connection with the Chicago Association of Commerce and Industry bulletin covering the truck drivers' recent three-year labor wage contract. The contracts in question were concluded for a three-year period setting up for the first year ten cents an hour wage increase, a five-cent an hour pension fund and an additional $2.75 a week welfare fund, including hospitalization and medical care.

1748 "Since the labor contract is now settled covering the three-year period, I am willing to correct our original proposal on the escalator clause so that the

rate per coupon for the second year will be $1.22 per coupon and the third year will be $1.23 per coupon. The only revision will be the one-cent increase covering the third year.

"To summarize, we will protect a $1.20 per coupon rate for the first year, $1.22 coupon rate for the second year, and $1.23 for the third year. There may be a question raised by your committee concerning peaceful labor relations in the event we are awarded the contract. Let me assure you and your committee that the subject has been gone into most thoroughly, both with Mr. Edward Fenner, the head of the drivers' Local Union No. 705, and also with Mr. James Hoffa, the International Executive Vice President of the Drivers' Union, and they have assured me of every cooperation to maintain complete harmony in order
1749 to have a satisfactory service available at all times. They would be glad to meet with your committee to give them their personal assurances."

On March 15, 1955, which is Defendants' Exhibit No. 21, the proposal of the Parmelee Transportation Company by Morris Markin, Chairman of the Board, and the proposal commences on Page 3 as follows:

"We are prepared to make this investment and furnish the kind of service that the railroads and their passengers are accustomed to, and in that connection we propose for your consideration the following:

"1. That the railroads, by written agreement, will continue with our services until December, 1961.

"2. That commencing with July 1, 1956 an adjustment of the coupon of one cent for each increase or decrease of three cents per hour in wages of the driver employees and that such adjustments shall continue yearly thereafter until the expiration of this contract.

1750 "3. That commencing with July 1, 1956, and yearly thereafter on July 1 the price of the coupon will be increased one cent for each one percent decrease in the number of coupons received by Parmelee during the base period and the price on the coupon will be decreased one cent for each one percent increase in the number of coupons received by Parmelee during the base period."

The next paragraph just supplements that. No. 5:

"5. That the baggage at all depots which is to be transferred by Parmelee shall be sorted and manifested by the railroads in triplicate. That Parmelee will assume any increase in cost of labor between July 1, 1955, and June 30, 1956. That Parmelee will assume any loss of revenue through the reduction in the number of coupons received between July 1, 1955, and June 30, 1956.

1751 "8. That the present coupon rate will be reduced from $1.22 to $1.20 as of July 1, 1955."

Defendants' Exhibit No. 22, which is the supplemental letter of Mr. Keeshin to the committee of April 6, 1955 is as follows:

"After an exhaustive study and consideration of the facts before me, I believe further enlightenment covering use of 20-foot trailers for the purpose of transporting passenger baggage is called for. Agents will be assigned to take care of passenger requirements and will be available at all stations sixteen hours a day. Observation reveals the handling of baggage by your employees could be reduced. The present method of handling the baggage onto your baggage hand trucks, unloading and stowing on the floor and baggage rooms and reloading crates congestion and contributes to the loss and damage

potential. Our plan tends to diminish the handling and labor involved. Your employees would merely drop the baggage directly on the trailer rather than go
1752 through the several handling chores observed during our survey and would neither stack nor load the baggage on the trailers."

Then skipping to paragraph II.

"In our original proposal we should have stated in the event the railroad management interposed objections to or doubted the feasibility of the trailer plan outlined above, we would eliminate it and substitute an operation similar to what you have now, except in place of a straight truck which has either a 12-foot or a 14-foot body, I would strongly urge the use of a 20-foot trailer for the transfer of baggage and our drivers would be responsible for the loading and unloading as is presently being performed.

"We assure you that our many years of experience dictates to us that this would be the best interests of all concerned. Our union labor regulations do not restrict the drivers performing this service."

Then paragraph "J" is as follows:

"To reiterate any decrease which might confront
1753 you in passenger traffic will in no way effect our proposed rate or the efficiency of the service. That is a fixed guarantee for three years, and we submit any economical change in this operation would be one for management to cope with and adjust accordingly to the dictates of its experience and ability. We submit that the present modern improvements by the railroads should be carried further to afford a deluxe service to the passengers using the bridge service between Chicago stations.

"The equipment to be used by us will be radiophone controlled, air conditioned during the summer

months and chauffeured by specialists in their field. It is felt that the accompanying publicity telling the public of the improved comfort at their disposal when transferring at the Chicago gateway will in some measure prove helpful in eliminating further decrease of passenger traffic in this region and prove consistent with the railroads' endeavors to improve
1754 their service wherever possible in the public interest."

Defendants' Exhibit No. 29 is the memorandum of April 21, 1955 to the file by Mr. Whittington which reads:

"Discussed with assistant vice-president Baird of the New York Central the Parmelee transfer contract and arrangements. I told Mr. Baird that I thought it was time for the railroad passenger traffic executives to consider this matter rather than have it delayed at frequent meetings with the Chicago committee. Mr. Baird agreed. I told him that we had continued to carry on with Parmelee with continued increase in transfer charges primarily for the reason that we had not received any other competitive bids from other companies; that the picture had now changed and that Keeshin company and the Willett Motor Coach Company were both interested in performing the service. Mr. Baird knew nothing of the Parmelee recent indicated charge of $1.50, and I told him that while
1755 this was not made in writing, that their representative had indicated to the Chicago committee that with requirements for new equipment and increased labor costs it was possible that their charge would have to be $1.50 per person. That it was not until Keeshin and Willett had entered into the picture that Parmelee had agreed to continue the service on the present rates.

"Mr. Baird agreed that the New York Central, the Santa Fe and our line were the principals involved in the Parmelee service because of the Pensylvania Railroad Union Station facilities, and that we would discuss it informally with other interested lines in Chicago the latter part of next week."

Then Defendants' Exhibit No. 25, which is dated June 20, 1955, and reports the proceedings of the Terminal Lines on June 13, 1955.

"The committee appointed at Chicago Terminal Lines' meeting January 29, 1954 presented a report and recommendation concerning the transfer of pas-
1756 sengers and baggage between stations in Chicago. After discussion the following recommendation was offered:

"It is recommended that effective with the close of business September 30, 1955 the arrangements with the Parmelee Transportation Company for the transfer of passengers and baggage between stations be terminated.

"It is further recommended that effective October 1, 1955 arrangements be made with Mr. J. L. Keeshin for the transfer of passengers and baggage between stations in Chicago.

"Adopted.

"The chairman was directed to inform Parmelee Transportation Company and Mr. J. L. Keeshin of the action taken and to arrange with Mr. J. L. Keeshin for a draft of proper contract to cover the operation for five years terminating September 30, 1960."

With the hope we could get this to the jury today, the defendants have decided to put on no more witnesses, and the defendants now rest.

1757 Whereupon The Defendants Rested Their Case In Chief

By the Court: That means for all defendants?

By Mr. Thompson: Yes, your Honor.

By Mr. McConnell: May we have a five-minute recess, Judge?

By the Court: Yes, a ten-minute recess.

(Whereupon a short recess was taken, after which the following further proceedings were had herein, in open court, out of the presence and hearing of the jury:)

1758 By the Court: All right. Mr. McConnell, before the jury comes out, I am mindful of your request about 4:00 o'clock today, and I don't want to embarrass you before the jury. I want to oblige you if I can.

By Mr. McConnell: We can't finish this afternoon, and if I have to take the onus before the jury, I will have to, I guess. You can tell them that I am the bad boy in this outfit.

By the Court: No, I am going to explain to the jury. I will not shift the responsibility to you, and that is why I am talking to you in the absence of the jury so I can say something to that effect.

By Mr. McConnell: I appreciate it.

By the Court: How long will it take you, approximately, do you think?

By Mr. McConnell: I will be through by noon Monday.

By the Court: Then over the week end, I would appreciate very much if each of you would prepare instructions and forms of verdict so that you can bring them in Monday morning and we can discuss them.

Then may I say to the jury, when I explain that I am not prepared with my instructions, and so on, that I
1759 hope to be through by Monday or Tuesday and not later? May I say that?

By Mr. McConnell: As far as I am concerned.

By Mr. Thompson: As far as we are concerned, but I think the less we say to the jury, the better.

By Mr. McConnell: You have already said it. Judge Thompson already has told the jury it is in my lap.

By the Court: No, I don't want the jury to get the impression that it is your delay.

Now, have I said everything on that, the instructions, and so on?

By Mr. McConnell: You have said everything you can say, and I appreciate it very much.

By the Court: That is all right. I will recess here about a quarter to four, and that will give you a chance to get over to Judge Adesko.

By Mr. McConnell: Thank you.

By the Court: All right. Bring out the jury.

(Whereupon in the presence and hearing of the jury the following proceedings were had:)

By the Court: It has been really twenty minutes instead of ten.

I have been discussing with both counsel the pos-
1760 sibility and advisability of letting you folks go for good as early as possible, and both counsel are extremely anxious to do so.

On the other hand, I do not see how we can possibly close it today with a rush. I haven't my instructions ready. Counsel will put in a little rebuttal. It will take me a little time to prepare my instructions, and then there will be considerable argument before the jury. Rather than have you tied up late at night, and I don't know how long it will take you, would I be imposing on you—and it is on me and nobody else in the case—if you have to come in on Monday?

I guarantee you, and I have the blessings of both sides, that we will try to dispose of it with dispatch some time Monday or not later than Tuesday. We are fortunate, because it is ordinarily a very lengthy trial otherwise, and everybody is concerned with your convenience.

I have told you the exact situation as prevails now so if you will be good enough, I will appreciate it very much, to just bear with us for not more than one or two days.

You know, they say haste makes waste. I am trying to avoid it so I can cover the law on it. There have
1761 been some serious questions of law here that you have seen me wrestle with, and that I have been trying to resolve, and I want to get my own bearings on it. So you can rest assured definitely that you will be through Tuesday, and maybe Monday.

In the meantime, you will have a nice week end rather than work until very late tonight, because it would be a long time with four counsel on one side and two on the other. I don't want to limit their time on arguments either.

All right, now we will proceed—oh, let's go out and have lunch and come back at two o'clock. That is for your good behavior.

(Thereupon a recess was taken to 2:00 o'clock, p.m., of the same day, Friday, May 6, 1960.)

1762 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Friday, May 6, 1960
2:00 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

1763 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1764 (And thereupon the following further proceedings were had herein:)

By the Clerk: The case on trial.
By the Court: Bring out the jury.

(The following proceedings were thereupon had in the presence and hearing of the jury:)

And Thereupon The Plaintiff, In Order To Further Maintain The Issues In Its Behalf, Introduced The Following Evidence in Rebuttal:

HERBERT B. LAZARUS, called as a witness on behalf of the Plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your full name, please?

A. Herbert B. Lazarus.

Q. Where do you live?

A. The town of Newcastle, Westchester County, New York.

Q. What is your profession?

1765 A. I am an attorney at law.

Q. In what state?

A. I am admitted to practice in the State of New York.

Q. How long have you been a practicing lawyer in the State of New York?

A. Thirty years.

Q. What is your present business or occupation?

A. I am president of the plaintiff, Parmelee Transportation Company.

Q. How long have you been president of that organization?

A. Two years.

Q. Prior to becoming the president of the plaintiff, what was your occupation? What was your business?

A. Vice president and general counsel of American Broadcasting Paramount Theatres. I have also been a director of Parmelee Transportation Company since 1955.

Q. In 1955 did you know who held the stock of the Parmelee Company?

A. Yes.

Q. Who held it, as far as you knew?

A. It was held by the public. The stock is listed
1766 on the New York Stock Exchange and has been since 1929. In 1955 we had outstanding approximately 590,000 shares.

Q. Do you know how many shares Mr. Markin owned of the Parmelee Company?

A. In 1955?

Q. Yes.

A. Six hundred fifty.

Q. Do you know approximately how many different holders of shares there were?

A. Several thousand.

Q. In 1955 did Parmelee, did the Parmelee Company own any Yellow Cab Company stock?

A. Yes, sir, approximately 45 percent of the outstanding stock.

1767 Q. And of what Yellow Cab Company was that?

A. The Chicago Yellow Cab Company. That stock is listed on the New York Stock Exchange, and there are thousands of stockholders and were in 1955.

Q. The balance of the shares were held how?

A. Parmelee Transportation Company owned approximately 45 per cent.

Q. Who owned the balance, do you know?

A. The public.

Q. Do you know whether or not the Parmeelee company owned any shares of the Checker Taxi Cab Company?

A. Yes, I do. They own no shares.

Q. And that is the Checker Cab Company—they didn't own any shares in Chicago of the Checker Cab Company?

A. The Checker Taxi Company, Incorporated, of Chicago, no, sir.

Q. Do they now own any of the shares of this Continental Airport Transport?

A. The Continental Air Transport Company, Inc. is a 100 per cent wholly owned subsidiary of the Parmelee Transportation Company.

Q. What is their business?

A. Their business is airline terminal service serving the airports of Chicago.

1768 Q. What connection does Mr. Markin have with the Parmelee company?

A. Mr. Markin is chairman of the board of the Parmelee Transportation Company.

Q. Is he related to you in any way?

A. Yes.

Q. What is the relation?

A. My wife's father.

By Mr. McConnell: You may cross examine.

1769 *Cross Examination by Mr. Thompson.*

Q. What is the Checker Taxi Company, Inc., of Chicago?

A. Well, the Checker Taxi Company, Inc., operates a fleet of taxicabs in Chicago, among other things.

Q. And that is owned a hundred percent by Morris Markin?

A. That is right.

Q. Checker Cab Manufacturing Company of Kalamazoo is what?

A. Is a corporation which manufactures taxicabs and automobiles.

Q. And that is owned 48 percent by the Checker Taxi Company?

A. Approximately; a little less than that.

Q. And Parmelee Transportation Company, Inc., is a subsidiary of Checker Cab Manufacturing Company of Kalamazoo, isn't it?

A. Yes, I would say so.

Q. And Checker Cab Manufacturing Company of Kalamazoo owns 63.3 percent of Parmelee Transportation Company?

A. A little less.

Q. Then who owns the other 47 percent?

1770 A. The general public.

Q. Then Chicago Yellow Cab Company is in turn owned by Parmelee Transportation Company?

A. No, sir, it is not owned. At the time, in 1955, it was 45 percent owned, the stock was 45 percent owned.

Q. In other words Morris Markin owns a hundred percent of Checker Taxi Company of Chicago, Checker Taxi owns 48 percent of the Checker Cab Manufacturing Company of Kalamazoo, Checker Cab Manufacturing Company of Kalamazoo owns 63 percent of the Parmelee Transportation Company, and then the Parmelee Transportation Company owns 45 percent of the Chicago Yellow Company?

A. Approximately.

Q. We won't bother with fractions.

Now, this Transportation Maintenance Corporation in Chicago is owned by whom?

A. Well, it is owned jointly by Checker Taxi Company, Inc., and Chicago Yellow Cab Company.

Q. About fifty-fifty?

A. 51/49.

Q. Fifty-one percent by Checker Taxi and forty-nine by Yellow?

A. Correct.

1771 Q. And Continental Air Transport of Chicago is owned a hundred percent by Parmelee?

A. Correct.

Q. In addition to owning these two taxi companies in Chicago, as you have indicated, the ownership as you have indicated, Parmelee Transportation Company also owns the National Transportation Company of New York?

By Mr. McConnell: He hasn't indicated that Parmelee owns it. He has indicated just the opposite.

By Mr. Thompson:

Q. I will ask if Parmelee Transportation Company, Inc., owns all of National Transportation Company of New York, does it?

A. It is a wholly-owned subsidiary of Parmelee, that is correct.

Q. That is right, and it operates the taxis in New York?

A. Yes, a fleet of cabs in New York City.

Q. Then the Parmelee Motor Fuel Company of Pittsburgh is wholly owned by Parmelee Transportation Company?

A. That is right.

Q. And the Parmelee System, Inc., of New York
1772 —that is inactive.

Yellow Taxi Company of Minneapolis is owned a hundred percent by Parmelee Transportation Company?

A. Correct.

1773 Q. And the Yellow Cab Company of Pittsburgh, Pennsylvania likewise?

A. Wholly owned subsidiary of Parmelee.

Q. And the Airline Transportation Company of Pittsburgh, Pennsylvania is wholly owned by Parmelee?

A. Right.

Q. Now this Chicago Yellow Taxi Company, Inc. is a holding company, isn't it?

A. Chicago Yellow Cab Company is a holding company which owns all the stock of Yellow Cab Company of Chicago.

Q. Yellow Cab Company of Chicago which operates the Chicago Yellows is wholly owned by Chicago Yellow Cab Company, Inc., which in turn is in part owned by Parmelee Transportation?

A. That is right.

Q. And the Benzoline Motor Fuel Company of Chicago is owned a hundred per cent by Chicago Yellow Cab Company, Inc.?

A. Correct.

Q. And also the Utility Motor Fuel Company of Robey, Indiana?

A. That is right.

Q. And this bunch of motor vehicle companies
1774 in Chicago buy their fuel from these gasoline companies, don't they?

A. Not necessarily.

Q. Well, I appreciate not necessarily, but do they?

A. Well, at the moment they don't.

Q. They but it cheaper somewhere else?

A. Yes.

Q. What about the insurance on the group of companies? Is that carried by the General Fire and Casualty Company?

A. Some of it.

Q. And that in turn is owned in part by Checker Taxi Company, Inc. of Chicago and the Parmelee Transportation Company, Inc. and the Chicago Yellow Cab Company, Inc.?

A. That is right.

Q. You are an officer of that, too, aren't you?

A. Of which, sir?

Q. The insurance company.

A. I am a director of General Fire and Casualty Company.

Q. Are you also a director of all of the rest of these companies we have named?

A. No, sir.

1775 Q. Are you a director of Chicago Yellow Cab that operates the cabs here?

A. Yes, I am.

Q. And of the Checker Cab?

A. No, sir.

Q. You have no official position in the company that operates the Checker cabs in Chicago?

A. None whatsoever; official or otherwise.

By Mr. Thompson: I will ask that this be marked Defendants' Exhibit 42 for identification.

(Thereupon said document was marked Defendants' Exhibit No. 42 for identification.)

By Mr. Thompson:

Q. I show you Defendants' Exhibit 42 for identification, which purports to be a corporate chart of these companies I have mentioned.

Is that an accurate statement of the interlocking ownerships?

A. I don't know as of what date this is, but it is substantially accurate, as of a given date.

Q. Substantially true as of 1955?

A. Substantially.

1776 Q. Now the interstation transfer service here in Chicago was operated directly by Parmelee Transportation Company, Inc., wasn't it?

A. That is correct.

Q. No subsidiary?

A. No.

Q. Do you happen to know what percentage the annual business of this local transit company, interstation transfer company, represented of the total of the Parmelee Transportation Company, Inc. in 1955?

A. Inasmuch as I became a director during the year 1955, and we lost our business completely during the course of that year, I couldn't give you a year's figures on it.

Q. Well, all right, let's take 1954 then.

A. I cannot answer that of my own personal knowledge.

Q. Let's take October 1, 1954 to October 1, 1955.

A. I was not connected with the company then.

Q. When did you become connected with it?

A. In 1955.

Q. When?

A. In April.

Q. All right, from April to October.

A. I was a director at the time and had no per-
1777 sonal knowledge.

Q. So you don't know what percentage of the business of Parmelee Transportation Company, Inc. this local interstation transfer business represented?

A. No.

Q. Sir?

A. As of that time, I do not know.

Q. Well, do you know as of any time?

A. Well, that is the only time you asked me. Prior to that, naturally I didn't know.

1778 Q. Subsequent to October 1, 1955, you didn't represent any part of—and prior to that you don't know?

A. Not sufficiently well to give you an accurate answer.

By Mr. Thompson: Very well. We offer in evidence this exhibit, if your Honor please.

By the Court: Any objection.

By Mr. McConnell: No objection.

By the Court: It may be received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit No. 42.)

By Mr. Thompson: That is all.

(Witness excused.)

By the Court: Call your next witness.

By Mr. McConnell: I would like to call Mr. Meserow to the stand.

By Mr. Meserow: This is a new role for me, your Honor, in this case.

ALBERT J. MESEROW, called as a witness by the
1779 Plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your name, please.

A. Albert J. Meserow, 231 South LaSalle Street, and I am a lawyer and have practiced for thirty years in the State of Illinois.

Q. During the months of May and June of 1955 did you represent Mr. Keeshin as a lawyer?

A. I did not.

Q. When did you first become retained by him?

A. In the latter part of September of 1955.

Q. Did you represent Local Union No. 725?

A. I did not.

Q. Did you, on May 31, 1955, call Mr. S. W. Bone, chairman of this committee of six?

A. I don't recall, but I may have. I don't remember the date.

Q. Do you recall calling Mr. Bone and telling him there was about to be a strike of the Parmelee drivers?

By Mr. Thompson: We object to that as improper rebuttal. I don't know what it rebuts.

1780 By the Court: Objection sustained.

By Mr. McConnell: Well, there was testimony

here that one of the things that the committee was concerned about was labor troubles, and I want to show where they originated.

By the Court: He may answer.

By the Witness: What was the question?

By Mr. McConnell: Read the question.

(Record read as above recorded.)

By the Witness:

A. That was not the essence of the conversation I had when I talked with Mr. Bone.

By Mr. McConnell:

Q. Did you tell him that you represented the Parmelee Company drivers?

A. Right, and I did.

Q. And did you tell him that you called to tell him that the president of the Drivers Union Local No. 725 had passed away?

A. No; I didn't know the president of Local 725.

Q. You didn't tell him that?

A. No, I don't believe I did.

Q. Well, can you make it any more definite than 1781 that? Did you or didn't you?

A. I did not, to the best of my recollection.

Q. Did you tell him that this man had been very favorable to the Parmelee Company in any wage disputes?

A. Yes, I did.

Q. Did you tell him that the next move would probably be a strike of the drivers and all stations in Chicago would have the appearance of pickets?

A. I told him that under certain conditions. If you want me to elaborate, I will.

Q. Did you tell him that?

A. Yes.

Q. Did you also call Mr. Hastings?

A. Yes, I did.

Q. And he was general counsel of the Chicago and North Western, was he not?

A. Right.

Q. And did you tell him substantially the same thing?

A. No, I did not tell him substantially the same thing as you questioned me. I told him something else.

1782 Q. Did you tell him there was a possibility of a strike of the drivers of Parmelee?

A. Yes, if Mr. Markin continued to refuse to give the men any increase.

Q. Did you represent the union?

A. I did not represent the union. I represented the Parmelee drivers.

Q. What drivers did you represent?

A. A committee of drivers that represented all of the drivers of Parmelee. There was Walter Antiporek, Joseph J. Vitus, Morris Toppel, and there were two others that I can't recall. They were night men.

The other three were day drivers for Parmelee, and they were a committee that represented the Parmelee drivers in negotiations with Mr. Morris Markin for an increase in wages.

Q. All right. Were those drivers members of an A.F. of L. union?

A. Local 725.

Q. And you were not attorney for that union?

A. I was not. In fact, I was in opposition to the union, because the men were objecting to the tactics of the union officials, because they played sweethearts with Mr. Morris Markin for many years.

1783 Q. The first gentleman that you mentioned, the first three gentlemen that you mentioned went over

and became employees of Mr. Keeshin, didn't they, in this company?

A. Yes, sir. There were 50 of them dying and breaking down his doors to become employees of Keeshin.

Q. And these three helped solicit them, didn't they, take them away from Parmelee and take them over to Keeshin?

A. I wouldn't know that, and I don't think so.

By Mr. McConnell: That is all.

Cross Examination by Mr. Thompson.

Q. Mr. Meserow, would you tell us the conversation you had with Mr. Bone sometime in May of 1955?

A. Yes, I will be glad to. This committee of Parmelee drivers whom I represented, and I did not represent Mr. Keeshin at that time, and, in fact, I had no dealings with Mr. Keeshin at all during that time, and I had represented the Parmelee drivers for several years, but they came to me and said that their contract was expiring with the Parmelee Transportation Company on June 30, 1955, and they at that time were getting $1.70 an hour, and they wanted to get an increase because
1784 their particular rate of $1.70 was below the going rate of similar drivers.

They had a meeting of this committee with Mr. Morris Markin at the Blackstone Hotel, and they came back to my office after the meeting, and I sat with them and I said, I asked what was the conversation they had with Mr. Markin, and they told me they asked him for an increase in pay.

They didn't like the split shift that they had. They had no health and welfare and pension fund, but they merely asked him for an increase in wages, and he sang the blues to them and cried and said he had no business,

and he couldn't afford to give them an increase, and he refused to give them an increase.

They then had a meeting with, and this is the conversation that I told to Mr. Lowell Hastings, the general counsel of the North Western Railroad, a personal friend of mine for many years, and Mr. Joe Wright of the Illinois Central, general counsel, Mr. Bone of the New York Central and one other, I have forgotten who, one other representative.

1785 I told them of this instance, and then I told them that the Parmelee Drivers' Committee had a second meeting with Mr. Markin at the Blackstone Hotel, and after much wrangling Mr. Markin finally consented to give these men a three cent per hour increase, and they told Mr. Markin, and they came back and told me, that if he persisted in only three cents as an increase, that they would go on strike and picket the stations.

I called up these four gentlemen representing the railroads, and I told them this; that I did not care, and I didn't care who got the Railroad Transfer contract, whether it was Mr. Keeshin or Parmelee, but I was only interested in the welfare and the wages of these Parmelee drivers, but in all fairness to them they should know that if Mr. Markin did not increase his offer of three cents, that they would go on strike and picket the stations, and that was the end of my conversations with them.

Q. Was the conversation with each of these persons substantially the same?

A. Substantially the same, yes.

Q. Did the Parmelee drivers that you repre-
1786 sented go to work immediately for Keeshin on October 1, 1955?

A. No, not all of them.

Q. Over what period of time were these transfers of employment going on?

A. I know of one that didn't go to work until the following March.

Q. Well, that was after they went over to Keeshin's employment after Parmelee Transportation Company failed to get the contract and after Keeshin did get it?

A. That is correct. They told me after, I believe it was June 13 when the decision was made by the railroads, that they were all concerned about their livelihood, and that they had no place to go, and Mr. Markin tried to keep them in his organization by a bunch of promises which never materialized, and they had no place to go, so they naturally would turn to Keeshin for employment.

Q. What was the occasion of your employment by Mr. Keeshin in September, I think you said, 1955?

A. In the latter part of September. I had been general counsel for the Illinois Commerce Commission for six years while I was an assistant attorney general,
1787 and he employed my services at that time to file the authority to transfer baggage in the State of Illinois, and I appeared before the Illinois Commerce Commission in Springfield, I believe it was on the 29th or the 28th of September, 1955, to handle that for Railroad Transfer Service, Inc.

Mr. Keeshin and his company, Railroad Transfer Service, were represented by Benjamin F. Goldstein, a former witness here. He was Mr. Keeshin's attorney at that time.

Q. And that was the beginning of your employment with Mr. Keeshin at the end of September of 1955?

A. That is correct.

By Mr. Thompson: That is all.

Redirect Examination by Mr. McConnell.

Q. Who were these four people that you talked to?

A. Well, it has been a long time. I mentioned three. There was Joe Wright of the Illinois Central, General Counsel, Lowell Mastings, General Counsel of the North Western. I don't remember talking to Mr. Bone, but if he said I did, then I did.

I may have talked to an attorney in his office, in
1788 the New York Central office, and the fourth one, I do not remember.

Incidentally, my purpose and motive in calling these gentlemen was to put a little pressure on Mr. Morris Markin so he would come up in his offer of wages. That was the sole purpose.

Q. These people that you talked to were all members or all their roads were represented on this committee of six, were they not?

A. I didn't know it at the time.

Q. You know it now?

A. Well, from being an attorney in the case, yes, I know it.

Q. They were, weren't they? That is all I asked you, whether or not they were members of the committee.

A. Well, let me see—the New York Central, the North Western, the Illinois Central—three of them were, and I don't know who the fourth one was.

Q. The three that you remember were on the committee of six?

A. I knew nothing about the committee.

Q. I didn't ask you that.

A. You called me as a witness, and now I will answer you. At the time I didn't know anything about com-
1789 mittees or anything else. All I was interested in was my clients, the Parmelee drivers, and since the trial,

yes, since I have been in this case I know about the committee of six.

1790 Q. All right. And they were on the Committee of Six, were they not?

A. Yes.

By Mr. McConnell: All right. That is all.

By Mr. Thompson: That is all.

(Witness excused.)

By the Court: Call your next witness.

By Mr. Meserow: Is it all right if I return to my role here?

By Mr. McConnell: I want to read from the deposition of Mr. Keeshin, which was taken as an adverse witness prior to trial. I want to read from page 2765:

JOHN J. KEESHIN, called as a witness herein, on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell (Reading).

"Q. How long has Mr. Meserow represented you?

A. Oh, Mr. Meserow represented me either late in 1954 or early 1955; I don't remember.

Q. And he still represents you?

1791 A. Yes, sir."

By Mr. Owens: Objection, your Honor, and I move that this be stricken. Mr. Meserow was not called as an adverse witness here. He was put on as Mr. McConnell's witness.

By Mr. McConnell: That is right. That shows the agency. That is what I have offered it for.

By the Court: Objection overruled. It may stand.

By Mr. Freeman: Your Honor, I would like to read to

the jury portions of the deposition of Mr. Richard E. Coleman, who was identified in this record as traffic passenger manager of the Baltimore and Ohio Railroad. His deposition was taken on January 25, 1957 in Chicago, Illinois.

I read from page 1619—

By Mr. Tone: Will you wait just a moment, please?

By Mr. Freeman: Surely.

Are you ready?

By Mr. Thompson: Yes.

1792 By Mr. Freeman: The witness was sworn and testified as follows:

RICHARD E. COLEMAN, called as a witness herein on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. Freeman (Reading).

"Q. Will you state your name?

A. Richard E. Coleman.

Q. And your address?

A. 9152 South Claremont Avenue, Beverly Hills.

Q. And your occupation?

A. Traffic passenger manager of the Baltimore and Ohio Railroad, Chicago.

Q. How long have you held that position?

A. Since February 1, 1946.

Q. You succeeded Mr. Whittington?

A. That is correct.

Q. As part of your duties Mr. Coleman, did you have anything to do with the transfer of passengers among stations in the City of Chicago?

A. I had the general supervision over it. The actual detail of it was conducted in our office by Mr. Nelson.

our assistant general passenger agent here, my next
1793 assistant.

Q. In the normal routine, did he handle the contacts with the transfer company?

A. Yes, sir.

Q. Did you handle any such contacts yourself?

A. Not directly, no, sir.

Q. Was Mr. Nelson your representative on the committee of railroads which conducted negotiations with transfer companies from time to time?

A. That is correct. He was the member representing the B&O on the sub-Committee of Six."

By Mr. Thompson: I don't see what this rebuts. We object to this as not proper rebuttal testimony.

By Mr. Freeman: It goes to Mr. Whittington's testimony, your Honor.

By the Court: It doesn't have to be, as I understand the rules, a deposition taken of an adverse witness—oh, your objection is that it is improper?

By Mr. Thompson: Improper rebuttal. It doesn't rebut anything.

By the Court: Let's see what it impeaches, if anything.

1794 By Mr. Freeman: It deals with Mr. Whittington's testimony.

By the Court: Objection overruled.

1795 By Mr. Freeman: (Reading)

"Q. Was he also the man representing the B&O on the committee of twenty-one of the Chicago Terminal Lines?

A. He represented in my name, and Mr. Whittington as the head of our department represented the railroad.

Q. And did Mr. Nelson attend, to the best of your knowledge, all of the meetings of the committee of six and

also of the Chicago Terminal Lines, insofar as they dealt with the transfer subject?

A. To my knowledge, I think he attended every one of them.

Q. Prior to May 19, 1955, did you attend any of those meetings?

A. I did not.

Q. The various documents which are in the file of the Chicago office of the Baltimore and Ohio Railroad dealing with this subject, bearing your typewritten name at the bottom, is it correct that either all or substantially all of those documents were actually prepared by Mr. Nelson?

A. Substantially all, yes, sir.

Q. Might it even be possible that he prepared all 1796 of them?

A. I might have written one, but anything that had to do with the actual details of these negotiations, as a result of what had transpired at one of these committee meetings, that was written by Mr. Nelson."

By Mr. Thompson: If the Court please, this is a waste of time. There is nothing being rebutted.

By Mr. Freeman: I turn to Page 1623. Your Honor, it will be connected up.

By the Court: All right. I haven't heard it yet, but I will let you go ahead.

By Mr. Freeman: You will recall, your Honor, that Mr. Whittington testified that he got all of his information from Mr. Coleman, and one of the important things in his mind was the matter of financial reports from Keeshin. This goes to that. Mr. Coleman is now testifying as to what information he possibly could have had in 1955, which he possibly could have imparted to Mr. Whittington, and I would like you to listen to it.

1797 By the Court: It is something that goes to the jury.

By Mr. Thompson: It comes from Nelson through Coleman.

By the Court: I don't want to comment on it because it is evidence. I will leave it to the jury.

By Mr. Freeman: (Reading)

"Q. Do you recall prior to May 19, 1955, ever stating to Mr. Nelson that you felt there had been some serious omissions from the reports he had made?

A. No, sir, I would have no way of knowing that.

Q. To the best of your knowledge, his reports were complete and accurate?

A. In my opinion, yes.

Q. Do you recall ever giving him any instructions or relaying any instructions to him to make a specific analysis of the Keeshin proposal?

A. Not any more than we were examining all of the proposals.

Q. You don't recall any instructions which mentioned the Keeshin proposal separately from the other proposals?

A. No, sir.

1798 Q. How did you happen to go to the meeting of May 19?

A. It was approaching the point where some final decision was going to be made, and I was interested and responsible to the extent that I felt I should be there."

1799 By Mr. Thompson: Where are you reading from?

By Mr. Freeman: Page 1624.

By Mr. Freeman: (Reading)

"Q. When did you make the decision to go to the meeting, if you recall?

A. I wouldn't have any way of knowing that; probably when the date was announced, or it could have been when it was established that I would be in town.

I travel a great deal, my territory consisting of 23 offices in 14 states, and sometimes I am away as much as two or three weeks at a time.

Q. Is Mr. Nelson in Chicago quite consistently?

A. He is here 12 months of the year, except for his vacation.

Q. In other words, he handles the Chicago office and you have jurisdiction over other offices, including the Chicago office, is that correct?

A. He has the general office and operates over my name into the territory.

We have another local office in the Bankers Building that he has no jurisdiction over directly.

Q. Where is the office in which you and Mr. Nelson are located?

1800 A. On the 6th floor of the Grand Central Station.

Q. Did you have any conversations, and I don't mean to include the actual meetings themselves, with representatives of other railroads on this subject matter of transfer of passengers?

A. Nothing specific, no, sir, that I can recall.

Q. Did you have any conversations with Mr. Bone?

A. No, not that I can recall.

Q. How did you know that the matter was approaching a conclusion which warranted your personal attendance at the meeting sometime before May 19th, Mr. Coleman?

A. Mr. Stevens, the committee had started off by a request through the representatives of the six terminal lines that each railroad be instructed to contact their local carrier; for example, in the B&O's instance, the P. D. Carroll Company, who does all of our work, and through a process of elimination, it finally simmered down to where the three firm bids that we had towards the end of the negotiations were the Parmelee company, the Keeshin and

the Willett, and as I recall it, Willett withdrew just a few hours before the meeting of May 19th.

Q. How did you learn that Willett had withdrawn?

A. As I recall it, Mr. Nelson mentioned to it me.

1801 Q. Do you recall if he told you how he knew?

A. No, sir, I don't think he did, no.

Q. And you attended the meeting of May 19th?

A. Yes.

Q. Did you have any conversations with Mr. Whittington either in person or over the telephone on this subject matter prior to that meeting, or shortly prior to that meeting?

A. I can't recall anything specific, Mr. Stevens.

Q. You did attend the meeting of May 19th?

A. Yes, sir.

Q. Did you sit with Mr. Nelson and Mr. Whittington at that meeting?

A. That is correct.

Q. Did you take any notes at that meeting?

A. No, sir."

By Mr. Freeman: Then I turn to page 1630.

By Mr. Thompson: We move to strike everything up to now as improper rebuttal.

By the Court: I will ask the jury to regard only that which they think is impeaching a witness. I don't know which part, and they have heard the evidence. Let them decide.

By Mr. Freeman: Page 1630.

1802 By Mr. Freeman: (Reading)

"Q. I want to be sure I understand you. First, will you tell me when—"

By Mr. Freeman: I will go back a question.

By Mr. Freeman: (Reading)

"Q. After the meeting of May 19th, and while Mr. Whittington was still in Chicago during the next day or

two, did you have any discussions with him on this subject matter?

A. Only in a general way that at that time we were very much impressed by what the Keeshin proposal was.

Number 1: That they had offered to purchase new equipment—

Q. Excuse me, Mr. Coleman: I want to be sure I understand you. First, will you tell me when this discussion took place and where it took place?

A. It could have occurred anytime during the day of the 20th. Mr. Whittington was here the next day.

Q. Were you with him during the day?

A. I was with him a greater portion of the day, yes.

1803 And during that day did you have a conversation with him about this subject matter?

A It would just be a natural exchange of conversation. We didn't sit down and conduct a conference on the subject.

We were actually over at the Merchandise Mart and probably were going to and from there, walking or riding, when we had discussion.

Q. Can you recall now what you said and what he said on that subject at that time?

A. I would say the general substance of it was that it appeared that the Keeshin proposal on the face of it was their offer to provide new equipment and give us a new look here in the transfer business, and particularly their offer to open their books to us at the end of a specified period was something that we had been looking for for a long time.

Q. Which one of you was it that made these remarks?

A. I think we mutually agreed to that, Mr. Stevens."

By Mr. Freeman: Then I turn to Page 1639—well, no, Page 1643:

By Mr. Freeman: (Reading)

"Q. Then you attended a meeting on June 3rd, the following day, I take it?

1804 A. Yes, sir.

Q. Did you meet with Mr. Whittington ahead of that meeting?

A. Mr. Whittington, as I recall it, came in on the Capitol that morning and he has a custom of going to the Union League Club. I live out south and the meeting was probably scheduled at ten o'clock, a.m. To the best of my recollection, I picked him in a cab at the Union League Club and we continued on over to the Union Station where the meeting was held."

By Mr. Freeman: Then on Page 1654:

By Mr. Freeman: (Reading)

"Q. Since October 1, 1955, Mr. Coleman, have you followed the conduct of the transfer business in Chicago?

A. Yes, sir.

Q. Are you familiar with the air conditioning equipment which was actually put into use?

A. From a mechanical standpoint?

Q. Well, just from a passenger standpoint as to how it worked, and so forth.

A. I don't think it has been wholly successful. I do think it has contributed something to the comfort

1805 of passengers in very warm weather, but actually last summer was not comparable to 1955.

Q. You mean it wasn't as hot?

A. We didn't have as much hot weather last summer as we did in '55.

Q. So it wouldn't have been as important in 1956 as it was in '55?

Did you personally make any checks of the working of the air conditioning?

A. No, sir.

Q. Did you ever ask any of your subordinates to make any such check?

A. As far as the station boys are concerned, they are conversant with it. We have station passenger agents and Mr. Nelson is conversant with it. I have never ridden in it, but I have noticed the equipment. I am a Rock Island commuter and I have noticed the equipment at LaSalle Street station as well as our own, but it is just like a heater in a car; on a very cold day it doesn't make you as comfortable as we are in this room, but it contributes something to your comfort where you have any form of air conditioning.

Q. Did you ever get any specific reports on the 1806 working of the air conditioning equipment?

A. No, sir, not on that subject.

Q. Was the equipment that you saw on June 2nd air conditioned?

A. No, sir.

Q. Did you ever ask for a specific report on the working of the air conditioning equipment?

A. I don't recall that I did, no, sir."

By Mr. Freeman: Then, finally, on Page 1658:

By Mr. Freeman: (Reading)

"Q. Since the execution of the contract with Mr. Keeshin's company on October 1st, have you made any inspection of Mr. Keeshin's financial statements?

A. No, sir.

Q. Do you know if Mr. Nelson has?

A. No, sir.

Q. You mean you don't know or you know he has not?

A. Since October 1st?

Q. Yes.

A. No.

Q. I am still not clear whether you mean you don't know or whether you know he has not made such an inspection.

1807 A. I have no knowledge of his having made any.

Q. At least you never asked him to make any?

A. No, sir.

Q. Do you know if any such statements have been submitted to Mr. Whittington for examination?

A. Let's get back to the date now, Mr. Stevens.

Q. Since October 1, 1955.

A. No, sir.

Q. You don't recall sending any such statements to Mr. Whittington?

A. I don't recall any.

Q. You don't recall Mr. Whittington asking for any such statement?

A. No, sir.

Q. So, to the best of your information, no representative of the B&O has made any examination of Keeshin's financial operation since October 1, 1955?

A. No, sir."

By Mr. Freeman: That is the end of my reading of Coleman's deposition.

I would like now to read certain excerpts from the deposition of Mr. Quackenbush, going only to comparisons of service, and in rebuttal to the testimony of

1808 Mr. Padrick.

I will start on Page 161—

By Mr. Thompson: Just a moment.

By Mr. Freeman: And I call Mr. Quackenbush as an adverse witness.

There has been no offer of proof through Mr. Quackenbush on this section, and neither has there been any reading of his deposition on this particular issue.

1809 By Mr. Thompson: If the Court please, I don't know why counsel seems to be making an argument.

I just want to call attention to the fact that the deposition of Mr. Coleman was taken on January 25, 1957, which is a year and a couple of months after the Keeshin business started.

By Mr. Freeman: I thought I made that clear.

By Mr. Thompson: The financial statements came a year later.

By Mr. Freeman: He is not making an argument.

By the Court: Proceed.

By Mr. Freeman: I will start on page 161, your Honor.

"CHARLES E. QUACKENBUSH, called as a witness herein on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman (Reading).

"Q. To get back to the question of the transfer charge, or the coupon rate as it is generally called, weren't you primarily interested in what that coupon rate would be?"

By Mr. Freeman: Oh, I should identify this deposition.

We read parts of it previously. This was taken 1810 November 8, 1956 before a notary public in Chicago.

The witness was duly sworn and he did testify under oath, pursuant to my examination.

By Mr. Freeman: (Reading)

"A. Mr. Freeman, anything involving the North Western Railroad in regard to costs, we are always interested in it."

By Mr. Thompson: If the Court please, this is not rebuttal of anything. This is just reading all over again the same thing that they have been over. They had Mr. Quackenbush's deposition and read it before, all they wanted to read, on their direct. Now they come in on rebuttal.

By the Court: I will have to rely on your representation that this is rebuttal.

By Mr. Freeman: I am an officer of this court, and I make that representation.

By the Court: I am not questioning it. I say on that objection I have to rely on your representation that it is part of the rebuttal.

I want to explain to the jury what the objection is
1811 so they will know. There are certain rules which pro-
hibit the going in of new matter in rebuttal. If it is new matter you disregard it. If it has any tendency to impeach something, they have a right to put it in, and I don't want to comment on your prerogative. It is up to you folks to pass on that one question.

Is that clear?

By Mr. Freeman: Thank you, your Honor.

I had better read the question over again.

By Mr. Freeman: (Reading)

"Q. To get back to the question of the transfer charge, or the coupon rate as it is generally called, weren't you primarily interested in what that coupon rate would be?

A. Mr. Freeman, anything involving the North Western Railroad in regard to costs, we are always interested in it.

Q. It was of vital importance to you, that cost element, wasn't it?

A. Yes. Any cost is of vital importance to us.

Q. And so, the question of any increases in costs
1812 either in the amount of the coupon rate or in the
collateral services that the railroad would have to perform, would be of vital interest to you as the North Western's representative in these negotiations?

A. It would be of vital interest to us."

1813 By Mr. Freeman: Then I turn to Page 163:

By Mr. Freeman: (Reading)

"Q. Did you at any time during January 1st to May 13th check the financial status of Mr. Keeshin, his financial background?

A. I, as an individual for our company, tried to secure all the information I could on Mr. Keeshin.

Q. What information did you secure with respect to his financial status?

A. Financial.

Q. When did you secure this financial information?

A. When did I? Well, I had secured some of it—I don't know just exactly when. Some of it was about his, I believe, his bankruptcy."

By Mr. Freeman: Then I turn to—

By Mr. Thompson: We object to that and move to have it stricken. They have hinted at that half a dozen times. There is no evidence whatever of any—

By Mr. Freeman: This is evidence, his testimony under oath.

At Page 170—

By the Court: Overruled. Proceed.

1814 By Mr. Freeman: (Reading)

"Q. Had you been satisfied with the Parmelee service up until that time—"

By Mr. Thompson: Where is this?

By Mr. Freeman: I will go back to Page 169. The question related to May 1955, and now this question, Page 170:

By Mr. Freeman: (Reading)

"Q. Had you been satisfied with the Parmelee service up until that time?

A. Yes, we had, to the best of my knowledge at least.

Q. Did you ever discuss with Mr. Brennan or did you ever—let me leave it at that. Did you ever discuss with Mr. Brennan the financial ability of Parmelee to render the service that was rendered?

A. I think he was aware of that. I don't recall that I ever discussed it.

Q. Was there ever any question in your mind, for example, Mr. Quackenbush, about the financial ability of Parmelee to conduct the services it was conducting?

A. No."

By Mr. Freeman: Then I turn to Page 172, the 1815 bottom of the page:

By Mr. Freeman: (Reading)

"Q. You had always had rather straightforward dealings with Parmelee, had you not?

A. To the best of my knowledge."

By Mr. Freeman: Then on Page 174:

By Mr. Freeman: (Reading)

"Q. In the past when you had any problem involving the Chicago transfer situation had you any difficulty contacting somebody at Parmelee who would be an authority to handle that problem?

A. I don't recall that I ever have.

Q. You always had Mr. Scheeder or Mr. Krock or Mr. Passolt who were ready and available at a moment's notice to handle whatever problem you had, did you not?

A. I was always able to get ahold of somebody to resolve it.

Q. And resolve it rather promptly?

A. That is right.

Q. You went to the meeting of the subcommittee on May 19th?

A. That is correct.

Q. And you were accompanied to that meeting by 1816 Mr. Brennan, were you not?

A. That is right.

Q. And this was the first—was this the first time that Mr. Brennan ever attended a subcommittee or committee meeting to your knowledge?

A. On this particular subject?

Q. On the Chicago transfer subject.

A. Yes, it was."

By Mr. Freeman: Then on Page 179:

By Mr. Freeman: (Reading)

"Q. What happened at the May 19th meeting?

A. Well, Mr. Markin—Mr. Keeshin was there in the morning and presented his proposal and we had the opportunity of asking any questions we so desired at that meeting, and Mr. Markin came down in the afternoon and presented his proposal. We also had the opportunity of putting questions to him.

Q. Did you know what the reaction of the committee was to the proposals that were presented?

A. No, I did not."

By Mr. Freeman: Then on Page 180:

By Mr. Freeman: (Reading)

"Q. Did you prepare a memorandum indicating the proposals that were presented up to and through May
1817 19 and your reactions and recommendations with respect to the two carriers that were left, Parmelee and Keeshin?

A. A memorandum to who?

Q. For Mr. Brennan's signature and addressed to Mr. Small.

A. That was a letter.

Q. You did prepare a letter?

A. I assisted in the preparation of it.

1818 Q. Is this document which I now hand you, and which has been previously been identified as Brennan's Exhibit No. 2, the memorandum or letter that you prepared or assisted in preparing?

A. Yes, it is."

By Mr. Freeman: And that document has been identified here as Plaintiff's Exhibit No. 2, and I will want to offer it as soon as I get through with this deposition.

By Mr. Freeman: (Reading)

"Q. Who else assisted you?

A. Mr. Stewart.

Q. Did Mr. Brennan assist you?

A. Oh, yes. We prepared a draft and the three of us discussed the draft."

By Mr. Freeman: And then on page 182, in the middle of the page.

By Mr. Freeman: (Reading)

"Q. Did you have a discussion with Mr. Brennan of the draft and the subsequent memorandum that was prepared and has been identified as Brennan Exhibit No. 2?

A. Well, the three of us were all in on it. Naturally it was discussed.

Q. Did you discuss the matter of equipment?

1819 A. Yes.

Q. And did you discuss the matter of relative cost of the transfer coupon?

A. That was discussed."

By Mr. Freeman: And then on page 193.

By Mr. Freeman: (Reading)

"Q. When were you first advised by Mr. Brennan that the North Western was going to vote for Keeshin?

A. When we were on our way to the meeting June 3rd."

By Mr. Freeman: On page 199.

By Mr. Freeman: (Reading)

"Q. You had never had any difficulty enforcing any obligation against Parmelee without contracts as long as there was an agreement of understanding?

A. That is right. We ran over 100 years without a contract.

Q. And during that hundred years was there ever an instance when Parmelee's commitment was violated with respect to any financial obligation it undertook?

A. Not that I am aware of."

By Mr. Thompson: I should think obviously a great deal of it is hearsay.

By the Court: Proceed.

By Mr. Freeman: Page 202.

1820 By Mr. Freeman: (Reading)

"Q. Isn't it a fact, however, that Keeshin is rendering less extensive service?

A. What do you mean by less extensive service?

Q. That is, that it is not carrying passengers from the North Western depot to destinations in the central business district like hotels?

A. That is correct.

Q. Is it not a fact that the Keeshin service does not perform pickup and delivery services on Sundays which was the policy with respect to Parmelee?

A. That, I don't know.

1821 Q. Did you receive a request shortly after June 13th by Mr. Keeshin to provide for the payment of his bills semi-monthly, rather than monthly?

A. We did.

Q. And did you consider that request?

A. We did.

Q. And did you abide by it?

A. We did.

Q. And would that involve additional accounting expenses on behalf of the railroad?

A. That—

Q. —is the accounting department?

A. That is right. That is the accounting department. I have nothing to do with it.

Q. In your activities in the passenger traffic department, haven't you from time to time been advised of the tremendous accounting expense that various phases of your passenger operations entails?

A. Yes."

By Mr. Thompson: If the Court please, obviously none of it is in rebuttal to anything. They had a chance to put on their case and had a week and a half to do it.

They read part of the deposition, and they are read-
1822 ing it all over again. I suppose we will have to start in on surrebuttal to finish this.

By the Court: I will let them finish it, and I will reserve my ruling.

By Mr. Freeman: Page 208:

By Mr. Freeman: (Reading)

"Q. At these meetings did you or your North Western representative, legal department representative, suggest the inclusion of a termination clause for failure of Keeshin to provide the type of service that he had undertaken to provide?

A. I think the entire committee was in accord on such a termination clause.

Q. That it should be included?

A. Yes, sir.

Q. Do you know whether such a termination clause was included in the contract?

A. I believe it was. I don't have a copy of the contract before me.

Q. But you don't know whether or not the termination clause was in or out of the contract as finally drafted?

A. I don't at the moment, unless I see the contract.

Q. Would you regard it as an important factor in
1823 the contract?

A. I would.

Q. Did you suggest that the contract contain a specification of the type of equipment and most particularly the fact that it would be air conditioned?"

By Mr. Keating: Your Honor, I object. I think the contract is in evidence, and it speaks for itself.

By the Court: Let him finish it.

By Mr. Freeman: (Reading)

"A. My recollection is that we did.

Q. Do you know whether the contract contained such a specification of the type of equipment to be afforded?

A. Not without seeing it, I wouldn't be positive.

1824 By Mr. Freeman: Page 210.

By Mr. Freeman: (Reading)

"Q. Now, I will turn to the equipment that was suggested and proposed by Mr. Keeshin and ultimately put in operation on October 1st. As I understand it, you were opposed to the use of the Volkswagon?

A. That is right.

Q. Mr. Keeshin nevertheless put ten Volkswagons in operation on October 1st?

A. That is right, he did.

Q. But he abandoned them in January?

A. He did.

Q. And was one of the reasons for the abandonment the fact they were not comfortable for the operation of passengers?

A. I don't know. They weren't air conditioned, and I told him I didn't want them over at the North Western station."

By Mr. Freeman: Then on page 212.

By Mr. Freeman: (Reading)

"Q. Had they made any investigation concerning whether the station wagons were air conditioned during the summer?

A. Who is 'they'?

1825 Q. The agents associated with you, people with you or under you?

A. I don't know."

By Mr. Freeman: Page 219, your Honor.

By Mr. Freeman: (Reading)

"Q. Were one of the features that you were told about in the equipment that was to be supplied, the radio dispatch central control that Mr. Keeshin proposed? Was that a feature?

A. Yes, that was a feature.

Q. Was that something that interested you or Mr. Brennan, that you know of?

A. I don't know whether it interested Mr. Brennan or not. It interested me to some degree. It was just an added feature.

Q. Wasn't it true that the limousines had the passenger —"

By Mr. Thompson: Just a minute. Where are you going to now?

By Mr. Freeman: It is page 219. My pages were reversed. I am on page 219 now.

By Mr. Freeman: (Reading)

"Q. Wasn't it true that the limousines had the passenger compartments separate and apart from the
1826 baggage compartments so that you could put baggage in and out of the back without exposing the passengers to the elements?

A. Yes, sir.

1827 Q. The station wagons, in contract, in order to put the baggage in, you had to lift the back of the car and the entire vehicle was open, wasn't it?

A. The back part of it was open.

Q. So that if there was a cold gust of wind, it would go in and encompass the passengers?

A. That is right.

Q. Did you make any investigation of the garage and maintenance facilities that were going to be provided by Keeshin for the station wagons and Volkswagons?

A. No, sir.

Q. Were you interested in the cleanliness of the vehicle?

A. Yes, Sir.

Q. Did you ever make an inspection of the station wagons?

A. Yes, sir."

By Mr. Freeman: Now I go to Page 220.

By Mr. Freeman: (Reading)

"Q. Do you know whether radio control of these station wagons has been in operation since October 1st or have they abandoned it?

1828 A. I don't know.

Q. Do you know what type of dispatch system Parmelee maintained?

A. I thought theirs was a phone dispatch system.

Q. And they had an agent in attendance at each phone at each station, and a central switchboard, did they not?

A. I know they had an attendant there, and I know they had a telephone. As far as our station is concerned, as to whether they had a central dispatch board or that—

Q. You don't believe they did?

A. I don't believe I have ever seen it."

By Mr. Freeman: At the bottom of the page:

By Mr. Freeman: (Reading)

"Q. Do you think that a central dispatch system would be an improvement over what Parmelee's method was in dispatching cars to points where they were needed?

A. I have never studied the matter, so I couldn't answer.

Q. In the past, whenever there was a traffic problem presented at any station, Parmelee responded by its

1829 dispatch system that it had, did it not?

A. That is right."

By Mr. Freeman: Now on Page 226.

By Mr. Freeman: (Reading)

"Q. How about the matter of rates on unchecked baggage, and here I refer to instances where split, so-called split rides through Chicago are used, where the passenger did not check through baggage but then decides that he wants the transfer company to transfer his baggage from one station to another after he gets to Chicago.

1830 Do you know what the practice was with respect to Parmelee as compared to what the practice is in the case of Keeshin?

A. Can you quote an example?

Q. Yes. It is my understanding and see if this accords with your recollection: That a passenger who came off the North Western Station and had four bags but didn't have a transfer coupon and asked that the bags be transferred to another station and be checked, that they would be checked through at the cost of a single transfer coupon, whatever the going rate was. Does that accord with your recollection?

A. That is right.

Q. But that Keeshin provides a rate of $1.20 for the first piece and 50 cents for each additional bag or 75 cents for each additional trunk and that if the passenger has more than one bag, he pays more?

A. That is what he asks for, yes.

Q. Isn't that what has been approved by the committee and by the Chicago Terminal Lines?

A. It has been approved by the Chicago Terminal Lines, although at that one particular meeting—

Q. You raised some objection?

A. Yes, sir.

1831 Q. But they, nevertheless put it through, didn't they?

A. That's right.

Q. And the meeting at which you raised the objections

was May 2, 1956, as this record would show; would that be approximately right?

A. That would be approximately right. It was in the spring.

Q. As a matter of fact, wasn't it the ultimate conclusion of the committee that Keeshin would be permitted to quote whatever they desired on that service or any other service that wasn't directly paid for by the railroads?

A. I don't recall whether we went that far or not."

By Mr. Freeman: (Reading)

By Mr. Freeman: On page 237.

"Q. Had you ever attended meetings of the Chicago Terminal Lines at which various railroads raised questions with respect to the type and character of service being rendered and complained against the service?

A. Yes.

Q. And were those meetings held in November and almost every other month since?

A. I don't know when they were held.

1832 Q. But there has been several of these meetings at which—

A. Yes, there have been meetings at which it has been discussed.

Q. And in which criticism has been directed against Keeshin?

A. No.

Q. Well, no, wait until I finish my question.

A. Excuse me.

Q. In which complaints were directed against the service that was provided by the Keeshin company?

A. It may have been discussed at meetings.

Q. Well, it is not an exact answer to my question. Or, let me put it to you again. I have asked you whether you didn't attend several meetings at which various railroad

representatives complained against the character of passenger transfer, baggage transfer and pickup and delivery service rendered by the Keeshin organization.

A. I probably was there.

1833 Q. And you remember that such complaints were raised?

A. I have heard some talk."

By Mr. Freeman: And that is all with Mr. Quackenbush.

(Witness excused.)

By the Court: All right; I will now rule that that which is duplication or duplicatious may be stricken, and that which you consider as rebuttal, you may regard as proper.

It is a long document, and I can't take sentence by sentence, so I think it is entirely up to the jury.

It is improper if it has been done before and could have been done before the end of the main case. If it is rebuttal on this case, you may regard it. Otherwise, it is stricken.

By Mr. Thompson: If the Court please, a lot of questions were read which were nothing but speeches to the witness, and the speeches to the witness brought forth, "I don't have any recollection about that. I don't remember," and so on and so forth.

What does that prove?

By the Court: I am sure that has no effect on

1834 the jury, those questions he doesn't remember.

By Mr. Freeman: Let me comment on it. I think it is important to the jury if some issue that was regarded as very important by the defendants—

By the Court: All I said was that it is up to the jury.

By Mr. Freeman: It is significant that a witness will say, "I don't remember," or "I made no investigation" of an issue regarded as important.

By the Court: That is entirely up to the jury.

FELIX A. KROCK, called as a witness by the plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you please state your name and your address, sir?

A. Felix A. Krock, 1340 South Fairview, Park Ridge, Illinois.

Q. Were you formerly employed by the Parmelee Transportation Company?

A. I was.

1835 Q. How long were you employed?

A. Twenty-five years.

Q. What capacities did you occupy?

A. Several. The last 12 years general superintendent.

Q. What were the duties of the general superintendent?

A. I was in complete charge of operations.

Q. I mean how broad was that authority?

A. It had to do with service, passenger service, baggage and service, city delivery, full jurisdiction of operations.

Q. Did you have any assistants?

A. I did.

Q. How many assistants?

A. Three.

Q. Was Mr. Edward Bayr an assistant of yours?

A. He was.

Q. Do you see him in the courtroom here?

A. Yes, there. (Indicating)

Q. Is that Mr. Bayr?

A. That is Mr. Bayr.

1836 Q. Now, Mr. Krock, in your position with the Parmelee company during the last twelve years, did

you have occasion to make observations and inspections and investigations of the service and operations of both Parmelee and its various competing and collateral transportation companies in Chicago?

A. I did.

Q. How frequently were those investigations and observations made?

A. They were made daily generally, if not by myself, by one of my assistants.

Q. Did Mr. Bayr participate in those investigations and inspections?

A. Yes.

Q. Were any investigations and inspections made of the Keeshin company, the Railroad Transfer Service, Inc. after October 1, 1955?

A. Yes, sir.

Q. Did you make observations and investigations of the matter of the adequacy of the Keeshin transfer service with respect to their ability to move passengers off the stations?

A. I did.

By Mr. Meserow: I object to the question, be-
1837 cause it calls for a conclusion of the witness.

By Mr. Freeman: It is preliminary.

By the Court: He may answer.

By the Witness:

A. I did.

By Mr. Freeman:

Q. Will you tell us of the observations and investigations that were made by you and your department and be as specific as you can by first telling us the times that it occurred, and then we will go into the results that you reached.

A. Well, as far as times, they were made at isolated hours whenever we felt it was advisable to go out and do some checking, generally during what we knew were the busy hours of the day, and it was made at regular intervals.

Q. What years?

A. 19—well, starting in October of 1955 through 1956 and part of 1957.

Q. Did you have some of your assistants assist you in these investigations?

A. I did.

Q. Were regular reports made of these objections?

1838 A. They were, yes.

Q. Was this in line with the regular routine you had followed in connection with the performance of your job with the Parmelee Transportation Company?

A. Yes.

Q. This was no different than what you had done for many years before?

A. No.

1839 Q. Will you tell us what you observed and what your department found with respect to the ability of the Keeshin company to move passengers from the stations?

By Mr. Thompson: If the Court please, we object to that as calling for pure conclusion of the witness.

By the Court: Yes, the form of the question is bad. As to the ability of the Keeshin Company to move traffic, he can only testify as to results.

By Mr. Freeman: This same question was aksed Mr. Bayr, but I am willing to reframe my question here.

By Mr. Freeman:

Q. Will you tell us what you observed and what the results of your observations were?

By Mr. Owens: Objection, your Honor. One of the foundation questions asked was, "Was this the usual type of investigation made by you in the many years of your service?" Obviously, this investigation of Keeshin was being made only after Keeshin started its operation 1840 and Parmelee had ceased.

By the Court: I will let him answer.

By the Witness: What was the question?

By Mr. Freeman:

Q. The results of your observations and investigations.

A. Well, on many instances we found a large number of people standing at loading areas waiting for vehicles which were very slow in arriving or didn't arrive at all. On one specific instance I observed myself, which was on or about December 20, 1955, at the Dearborn station.

Q. 1955 or 1956?

A. 1955. I arrived at the Dearborn station about 8:30 and found around 200 people standing waiting for service, and I stayed there until 9:30, and by that time most of the people had taken cabs or walked away from the station, a little while after 9:30, but there were still twenty people left waiting.

Q. Did any of the people come over to you and ask you any questions?

A. Yes, predominantly service men.

By Mr. Thompson: We object to the hearsay.

By the Court: Objection sustained.

1841 By Mr. Freeman:

Q. Will you give us some other instances of investigations made by your department?

A. On June 20 of 1956 one of my assistants at my direction, Dave Weiner, made a check at the Dearborn station.

By Mr. Thompson: We object to any hearsay of what Dave Weiner told him. Of course, it must be observed

that this was in preparation to file a lawsuit, and the witness spied getting information for this lawsuit.

By Mr. Freeman: Isn't that a nice objection, your Honor?

By the Court: The objection to what somebody else told him is sustained.

By Mr. Freeman:

Q. I want you to tell us the results of your department's investigation. What other incidents did you, as head of your department—what knowledge did you have of any other instances?

1842 By Mr. Owens: Your Honor, I repeat the objection. The business of his department was not to be investigating other people's business operations. His department for years was to run a transfer business from station to station.

If he wants to testify to that sort of operation by his own company, fine, but here now he is running an investigative service and coming in and trying to make a report on it.

By Mr. Freeman: Your Honor—

By the Court: I will let him answer only as to what he personally observed.

By Mr. Freeman:

Q. Will you give us some additional personal observations in line with your investigations?

A. I had observed during the summer of 1956 at the Baltimore and Ohio generally between 7:00 o'clock and 8:00 o'clock, the same conditions, 45 minutes to an hour to get rid of a train, and at the Dearborn Station generally from 7:15 to 8:30, and these are my personal observations.

Q. In what year?

1843 A. 1956.

Q. Were there any observations made in 1957?

A. And some in 1957, through June and July of 1957.

Q. Did you have occasion to make these trips frequently?

A. I did.

Q. How frequently would you say?

A. Practically daily I would get out to the stations at one time or another.

Q. Do you know how many vehicles Keeshin operated as compared with the number of vehicles you operated?

A. Offhand, I do not know.

Q. Would the number of vehicles in service have helped to move passengers?

A. Definitely.

Q. If there were a greater number, it would facilitate the movement of passengers?

A. Yes.

Q. How many vehicles did Parmelee maintain in its service in 1955, do you recall?

A. 85 vehicles.

Q. Passenger vehicles?

A. That is correct.

Q. Now Mr. Krock, did you also have occasion
1844 to investigate the use or non-use of air conditioning on these Keeshin station wagons during the summer of 1956 and the summer of 1957?

A. I did.

Q. Will you tell us the nature of those observations and the investigation that you conducted and what results you found?

A. Well, whenever the weather got hot I went out either at the station or someplace where I could—where I could be at a vantage point, and I have checked as high as 24 vehicles driving around with their windows open, and obviously the air conditioners weren't working.

By Mr. Owens: Objection to that.

By the Court: Objection sustained as to the obvious.
By Mr. Freeman:

Q. Just say what you saw.

A. 24 vehicles with the windows open, and on another occasion I checked 14 vehicles, and the only two I found with windows closed, one was a passenger vehicle that the supervisor was driving.

1845 Q. In all of your investigations—did you attempt to make an observation of air conditioning service?

A. Yes.

Q. Approximately once a week during 1956 and 1957 when the weather was hot?

A. Yes, when it got hot.

Q. In all of these observations that were made in 1956 and 1957 did your department uncover any instance where a station wagon was in operation with the windows closed?

A. Yes.

By Mr. Owens: Objection to his department, to what his department did.

By the Court: Objection sustained.

By Mr. Freeman:

Q. What did you find in all of these observations with respect to the windows being opened or closed during the hot days in the summer of 1956 and 1957?

By Mr. Meserow: I object to what he found of all of these. Let him pin it down.

By the Court: I am limiting it to what he personally knows and observed.

By the Witness:

1846 A. I just got through saying that in all of my observations I only saw two vehicles with the windows closed in all my personal observations, and one was driven by a supervisor.

Q. And in all other instances?

A. The windows were wide open.

Q. What were the weather conditions gnerally during those days?

A. We would never go out unless it was hot, 85 or 90 degrees.

By Mr. Freeman: I would like to identify several reports, without indicating what their contents are, a report of June 16, 1956, as Plaintiff's Exhibit No. 120, a report of August 4, 1956, as Plaintiff's Exhibit No. 121, and a report of June 18, 1957, as Plaintiff's Exhibit No. 122.

As Plaintiff's Exhibit No. 123, this report of June 21, 1957, and as Plaintiff's Exhibit No. 124, this report of July 2, 1957. As Plaintiff's Exhibit No. 125, this report of July 1, or rather, July 11, 1957.

1847 As Plaintiff's Exhibit No. 126, this report of July 9, 1957.

(Thereupon said documents were marked Plaintiff's Exhibits 120 to 126, inclusive, for identification.)

1848 By Mr. Freeman:

Q. I show you these documents that have been marked numerically as Plaintiff's Exhibits 120 to 126, inclusive. Were those reports prepared in your department?

A. That is correct.

Q. Were they prepared pursuant to your direction and supervision?

A. That is correct.

Q. Were they prepared as part of the reports that were prepared by your department in the normal course of your functions as a supervisor?

A. That is correct.

Q. Were the individuals who prepared these reports working for you and under your direction?

A. That is correct.

Q. Were these maintained in the regular files of the company?

A. Well, these were maintained in my own file.

Q. And were your files the files of the Parmelee company?

A. That is right.

Q. Do these reports have to do with an investigation of the operation of air conditioning equipment—

1849 By Mr. Thompson: We object.

By Mr. Freeman: I just want to identify these.

By Mr. Thompson: They speak for themselves, your Honor, and we object to any statement by counsel which is obviously wrong.

By the Court: Let him finish his question.

By Mr. Freeman: I would object to the statement that it is wrong.

By Mr. Freeman:

Q. Were these reports made to you of investigations—

By Mr. Thompson: We object to anything that has to do with the content of a document. They speak for themselves.

By Mr. Freeman: I am not speaking of the contents of the documents.

By Mr. Freeman:

Q. Were these reports made to you dealing with the utilization or non-utilization of air conditioning equipment by the Keeshin transfer company?

A. They were.

By Mr. Thompson: We object to that as being hearsay.

By Mr. Freeman: I don't know what he is talking

1850 about. I offer in evidence Plaintiff's Exhibits 120 to 126, inclusive.

By the Court: The objection will be sustained.

By Mr. Thompson: Objection on the ground of hearsay and—

By the Court: The objection will be sustained to their admission.

By Mr. Freeman: Thank you, your Honor.

By Mr. Thompson: Just a minute, please, counsel.

We object to them as hearsay, and there has been no proper foundation laid for them.

By the Court: I have sustained the objection.

By Mr. Freeman: He likes to talk.

By Mr. Thompson: I couldn't hear the Court with three people behind me chattering.

By the Court: I am excluding them, and in addition to your objection I am sustaining that such an investigation cannot be properly brought before a jury or the Court by reports. That requires better evidence than that.

By Mr. Freeman: Do you want me to bring the 1851 man in?

By the Court: I am not telling you what to do, but I am excluding these documents.

By Mr. Freeman: I would like to submit some law on that subject, your Honor.

By the Court: I will hear you.

1852 By Mr. Freeman: Would you withhold a ruling until I have had an opportunity Monday to present you with law?

By the Court: Yes.

By Mr. Owens: For the record, the fact, your Honor, that the last answer of the witness disqualifies these documents as business records is because they are not the business of the Parmelee or Keeshin Company. They are the investigation of the business by somebody else.

By Mr. Freeman: You have already ruled.

By the Court: Proceed.

By Mr. Freeman:

Q. Mr. Krock, were you in the courtroom when Mr. Meserow was testifying?

A. I was.

Q. Do you remember the names of the three drivers that Mr. Meserow testified he represented?

A. I do.

Q. What were their names?

A. Joe Vitus, Walter Antiporek and—

Q. Morris Toppel?

A. Yes.

1853 By Mr. Keating: May the record show Mr. Freeman suggested the name to the witness.

By Mr. Freeman: Of course it shows.

By Mr. Keating: It wasn't quite as loud as your other statements, Mr. Freeman, and I thought they might have missed it.

By Mr. McConnell: The Judge is going to bite you in a minute if you don't keep quiet.

By the Court: Proceed, gentlemen, please.

By Mr. Freeman: Thank you, your Honor.

By Mr. McConnell: Not the Judge on the bench.

By Mr. Freeman:

Q. Mr. Krock, were those three individuals formerly employed by the Parmelee Transportation Company?

A. They were.

By Mr. Thompson: If the Court please,—

By Mr. Freeman:

Q. Approximately when?

By Mr. Thompson: Just a minute, please. Your Honor, I would like to have an opportunity to make ob-

1854 jections to these questions before he runs along. I object to the question previously asked and move to strike the answer, if there was one, as not being proper rebuttal of anything.

They certainly can't be bringing a witness on the stand to contradict or impeach the testimony of their own witness they put on the stand to prove this business of labor difficulties in 1955.

They put Mr. Meserow on the stand, and his testimony is their testimony, that they vouched for, and we challenge any attempt to qualify or explain it or impeach it.

1855 By the Court: I will let him answer.

By the Witness: What was the question?

(Whereupon the record was read as above recorded.)

By Mr. Freeman: I had no question pending.

By Mr. Freeman:

Q. When did they leave the employment of the Parmelee Transportation Company?

By Mr. Thompson: I object to that as immaterial and certainly not proper rebuttal or anything.

By the Court: He may answer.

By the Witness:

A. I don't know the exact date. It seems to me around September 15 of 1955.

By Mr. Freeman:

Q. Did these individuals, while they were working for Parmelee, seek to solicit employees for Keeshin's company?

By Mr. Thompson: We object to that as immaterial.

By the Court: Objection sustained.

By Mr. Thompson: It is not rebuttal of anything.

1856 By the Court: It would be hearsay if he did answer "Yes."

By Mr. Freeman:

Q. Do you know anything about the activities of these individuals?

A. I do.

By Mr. Thompson: We object to that as immaterial, and I move to strike the answer if there was one.

By the Court: Objection sustained.

By Mr. Freeman: Your Honor, I think it is clear that a great effort has been made by Mr. Thompson to demonstrate there were labor difficulties. We are trying to demonstrate to your Honor and to the jury who is responsible or who instigated these rumors of labor difficulties, and I think we have accomplished a great deal.

By the Court: The objection is sustained on the ground of hearsay. This man cannot testify to what somebody else said to somebody else.

By Mr. Freeman:

Q. Did you have any conversations with these individuals?

1857 By Mr. Thompson: If he did, we weren't there, and we are objecting to that as hearsay.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Do you know whether or not these three individuals became supervisors of the Keeshin company, the Railroad Transfer?

By Mr. Thompson: I object to that as immaterial.

By the Court: He may answer if he knows of his own knowledge.

By the Witness:

A. I do.

By Mr. Thompson: It is not proper rebuttal, your Honor, we submit.

By the Court: I don't mean to be discourteous, but I am merely passing upon what I think may have some probative value. Proceed.

By the Witness:

A. I do.

By Mr. Freeman:

Q. Will you tell us what you know about their positions with the Keeshin company?

A. All three of them were—

1858 By Mr. Thompson: Just a minute. We object to the question that has been asked and submit that it is not rebuttal of anything, obviously not.

By Mr. Freeman: I assume you will make the same objection to this line of questions. I only have one or two more questions.

By the Court: He may answer if he knows of his own knowledge, not hearsay.

By the Witness:

A. I do. All three were made supervisors of the Keeshin organization.

By Mr. Thompson: And I move to strike the answer.

By the Court: Let it stand.

1859 By Mr. Freeman:

Q. Were they made supervisors commencing October 1, 1955?

By Mr. Thompson: Objection to that.

By the Court: Unless he knows of his own knowledge.

By the Witness:

A. I don't know whether it was October 1 of 1955 or very shortly thereafter.

By Mr. Freeman: Thank you, Mr. Krock.

By the Court: You may cross-examine. First, does anybody else want to ask him any questions? If not, go ahead.

Cross Examination by Mr. Thompson.

Q. What is your present employment?

A. General manager, Continental Air Transport Company.

Q. Still in the pay of Parmelee Transportation Company then?

A. That is correct.

Q. And you are being paid while you are here today, I suppose?

1860 A. Correct, sir.

Q. You have been paid while you were assisting plaintiff's counsel in the preparation of this case?

A. I beg your pardon?

By Mr. Freeman: Objection to that.

By the Court: Read the question.

(Record read as above recorded.)

By Mr. Freeman: It assumes he was helping in the preparation. That is not established by the record, and it is not true.

By the Court: He is cross-examining, and he has a right to.

By the Witness:

A. I was getting paid constantly. I don't know what you mean by assisting the counsel in the preparation of the case.

By Mr. Thompson:

Q. You have not done anything in the preparation of this case?

A. Nothing other than to testify here.

Q. Well, what about this spying you were doing on the Keeshin service?

By Mr. Freeman: Objection to that.

1861 By the Court: The word "spying" may be stricken and the word "investigating" substituted.

By Mr. Freeman: Thank you.

By the Witness:

A. Actually, the investigating I was doing I was doing for my own benefit more than anything else. I wanted to see just how well somebody else was doing. I was responsible for the operation for twelve years before we went out of business, and I just wanted to see whether anybody could do any better.

By Mr. Thompson:

Q. And Parmelee Transportation Company was paying you while you were satisfying your curiosity about this matter?

A. That is correct.

Q. What is the department that you were saying, where you had these people employed assisting you in this investigation?

A. They were supervisors.

Q. What was the department? You were the head of some department, you said?

A. Yes, I was general superintendent.

1862 Q. Of what?

A. Of the Parmelee Transportation.

Q. When?

A. Since July of 1943 up to July 31 of 1957.

Q. What about on October 1, 1955, were you the Superintendent of the Parmelee Transportation Company?

A. I was.

Q. Superintendent of what division or what service?

A. Well, whatever service was left I was superintendent of.

Q. You mean of this interstation transfer service?

A. That is right.

Q. Did Parmelee Transportation Company still conduct interstation transfer service after October 1, 1955?

1863 A. Yes; we had some vehicle operating. We had trucks operating picking up city delivery baggage.

Q. Did you have anything to do—did you render any of this interstation transfer service after October 1?

A. No, we lost the business.

Q. Well, you said you were superintendent of the department that was handling this interstation transfer service.

A. We were—myself and two supervisors were left on the payroll of the Parmelee Transportation and carried our same titles and positions.

Q. And your employment was to interfere with the Keeshin operation?

By Mr. Freeman: Objection to that. It is obviously improper "interfere with." There is no reason to prejudice the jury that way.

By the Court: Objection sustained as to "interfere with."

By Mr. Thompson:

Q. You had, after October 1, 1955, Parmelee Transportation vehicles stationed at the stations after the contract was turned over—after the contract was given to the Keeshin company?

1864 A. We did.

Q. And you occupied the space that was allocated by the several stations to the vehicles that were employed in this interstation transfer business?

A. I don't follow you.

Q. You occupied the space that was set aside by the various stations for the vehicles that were employed in transferring passengers, didn't you?

A. No, we did not.

Q. You didn't have any of your vehicles?

A. Yes, but we weren't occupying anybody's space.

Q. Whose space were you occupying?

A. At the North Western Station we were in the street. We were in no way interfering with anybody.

At the Union Station we didn't go into it at all.

The LaSalle Street Station, we were out on the public street.

The Illinois Central is public property, and the Dearborn Station likewise. We were on a public street.

Q. You didn't have any of your vehicles in the station loading area at the Illinois Central?

A. That is a public street of the Illinois Central.

Q. Would you mind answering the question?

1865 A. Yes, we did.

Q. And the area where the transfering vehicles had loaded and unloaded for many years was the area that you were occupying?

A. Part of it, yes.

Q. And you were also occupying an area at the Dearborn Street Station?

A. Yes, sir.

Q. And also at the LaSalle Street Station?

A. At the LaSalle Street Station we were out in the street. We were not in the station at all.

Q. You didn't go inside the space there where the loading and unloading had been going on for years?

A. Only for a short period of time when we were granted permission to do so by the courts.

Q. I say, you did occupy it on October the 1st and thereafter for some period of time?

A. Yes.

Q. And you occupied also space at the Union Station where there was loading and unloading of passengers?

A. No, we did not.

1866 Q. At no time after October 1st?

A. At no time.

Q. And what about the North Western?

A. The North Western Station, we were out on Clinton

Street, which was not a part of the loading area assigned to interstation transfer.

Q. How long did you have these Parmelee vehicles occupying the space generally employed for the loading and unloading of transferring passengers?

By Mr. Freeman: I object to that.

His testimony has just been to the contrary.

By the Court: Overruled; he may answer.

By the Witness:

A. It seems to me it was July 31 of 1957 when we took them off the street entirely.

By Mr. Thompson:

Q. So when you picked up a passenger at these stations to be transferred to another station, did you charge them cash fares?

A. That is right.

Q. In other words, you were running taxi service with the Parmelee vehicles?

A. I don't know what you would call it, but we were transferring people to downtown area stations on
1867 a cash fare basis.

Q. Not on a transfer coupon basis?

A. No, sir.

Q. And the same thing—what about the transferring of their checked baggage?

A. We didn't transfer any checked baggage.

Q. You didn't even try that?

A. No, sir.

Q. Their hand baggage they did carry along with them, of course?

A. That is correct.

1868 Q. Who received the complaints of the Parmelee service during the period of time that it was under agreement with the terminal lines for transferrinng these passengers?

A. What complaints are you speaking of now?

Q. The complaints, whatever they were.

A. Well, generally they would be mailed in to our office, and Mr. Scheeder was the man who would generally receive them.

Q. Of course, you didn't know anything about them I suppose.

A. Yes, I sure did.

Q. What was Mr. Scheeder's job?

A. He was vice president.

Q. What about his having to do with the service, the operation of this interstation transfer business?

A. Well, as I mentioned, he was vice president and actually my immediate superior, and if there were any complaints come in I would soon hear about them.

Q. And you did hear about them?

A. When they came in, yes.

Q. Did the complaint from the station agent at Duluth, Minnesota, respecting the six engineers from the 1869 Minnesota Power and Light—

By Mr. Freeman: I want to object to this.

By Mr. Thompson:

Q. (Continuing) —Light Company—

By Mr. Freeman: Thank you, Counsel. May I object to this line?

By the Court: Don't you think you ought to let him finish his question, the same as I let you?

By Mr. Freeman: He never did, but I think this entire—

By the Court: I don't know what this is, but I could only find out from his question.

By Mr. Freeman: But his question was an attempt to make a statement of fact rather than to ask a question, and it invaded improper ground.

If Mr. Thompson wants to go ahead and ask it, go ahead.

By the Court: Will counsel please rephrase his question?

By Mr. McConnell: May I tell the court that I
1870 have just received word that my hearing has been put over until Monday, so I won't need to interrupt this.

By the Court: Fine.

By Mr. Thompson:

Q. Was there brought to your attention a complaint transmitted by Mr. Schafer, the agent at Duluth, Minnesota, of six persons who were traveling down to Schenectady, New York, from Duluth, of failure of the Parmelee Transfer here in Chicago on their transfer from the North Western station to the LaSalle Street station, in May, 1955?

A. I don't remember.

By Mr. Freeman: I would also want to object on this further ground, your Honor, that you will recall that Mr. McConnell inquired of Mr. Padrick with respect to specific complaints made by railroads to Mr. Padrick about the Keeshin service, and you rejected that evidence. It was objected to and you rejected it.

By the Court: I don't recall that. Will you repeat
1871 that again, please? When Mr. McConnell?

By Mr. Freeman: The exhibit was Plaintiff's Exhibit 117. It was a letter from Mr. Towns to Mr. Padrick, who was testifying. It had to do with the Keeshin service and Mr. Towns' reaction to the Keeshin service.

It was addressed to Mr. Padrick, Mr. Padrick said he had received it, it was from his files, and we were unable to inquire into that subject on the ground, as Mr. Thompson objected, that this was hearsay.

Of course, this, too, is hearsay. The witness doesn't even know about it, but I think any inquiry into this subject would necessarily have to be controlled by the rulings that you have made.

By the Court: He may answer if he received it. If he didn't—

By Mr. Freeman: Mr. Padrick stated that he received the letter.

By the Court: Who is Padrick? I have forgotten.

1872 By Mr. Freeman: Mr. Padrick was a witness Mr. Thompson put on the stand, and Mr. McConnell had cross examined, and Mr. Padrick said he had received a letter, dated May 22, 1956, from Mr. Towne of the Erie Railroad, and we could not inquire into that.

By the Court: Is that true, Judge Thompson? I don't recall the incident.

By Mr. Thompson: No.

By Mr. Freeman: I make the statement in the record, and I make it on the basis—

By the Court: I don't mean a question of truth.

By Mr. McConnell: I may say it is exactly correct. I tried to cross examine Mr. Padrick on a letter which he said he had received from Mr. Towns of the Erie Railroad, and Judge Thompson objected on the ground that I couldn't go into that because it was a hearsay statement by Towns of the Erie company as to the complaints that were made to his railroad. We were stopped on that ground.

Your Honor can look at this, if you wish. It shows

1873 exactly what the situation is.

By Mr. Thompson: It is quite a different situation to what we are dealing with now.

By the Court: Will you please differentiate, Judge? I don't recall this.

By Mr. Thompson: The situation there, as I recall it, if I may take a glance—

By the Court: Here it is.

By Mr. McConnell: I want to let the Judge see it. You have read this over and over again in your spare time. The Judge hasn't had a chance to see it. I would like to have him see it. I assume he is the Judge that is going to rule on it, not you.

By the Court: May I ask you a question, Mr. Witness? When these documents that were offered in evidence and upon which I reserved my ruling, were they made since the filing of this suit?

By the Witness: Yes.

By the Court: The investigation you are talking about was conducted since the filing of this suit?

By the Witness: That is correct.

1874 By the Court: We are talking about this suit.

By the Witness: Let me change that. I don't know whether they were made since the filing of the suit or not. They were made since we lost the business. Let me correct that.

By the Court: When was the suit filed, do you know?

By the Witness: I don't know.

By the Court: When was it filed?

By Mr. Thompson: February 17, 1956.

By Mr. Freeman: Some of these investigations were made before that.

By the Court: Before?

By Mr. Freeman: Before that.

By the Court: Some were in 1957?

By Mr. Freeman: Some were made in 1957. I say some were made before February, 1956; the others were made after.

By the Court: All right.

By Mr. Thompson: Thank you, your Honor, for letting me look at it.

That document is a communication of one of the
1875 railroads, as I see it, to Mr. Padrick respecting a feature of the transfer service.

By the Court: May I read it, please?

By Mr. Freeman: I just object to this as not proper cross examination, your Honor, and it has nothing to do with it.

By Mr. Thompson: I will state what my objection is when your Honor gets through. I don't want to interrupt.

My objection, your Honor, to the document when it was presented was that it had to do with the pickup and delivery service, and had nothing to do with the interstation transfer matter, and was immaterial to the issues before the Court.

By the Court: The objection will be overruled. He may answer the question about the complaint that he received. He testified to good service of Parmelee, and now this is proper cross examination on complaints.

By Mr. Freeman: I don't remember this witness testi-
fying about the Parmelee service at all. At least, I
1876 didn't inquire. He may have, but I didn't inquire of anything except these two lines of investigation that he conducted.

I am going to put Mr. Scheeder on the stand, who will discuss the whole subject of the Parmelee service. If Mr. Thompson wants to interrogate him, he can. If he wants to go ahead—

By Mr. Thompson: That promise I accept.

By the Court: Objection overruled. You may proceed.

By Mr. Thompson: Just a second. I have some more instructions.

That is all.

1877 *Cross Examination by Mr. Meserow.*

Q. Mr. Krock, after October 1st, 1955, I believe you testified that Parmelee had its vehicles at the stations until July of 1957, is that correct?

A. That is right.

Q. Now, isn't it true that at the Dearborn station, your vehicles occupied the same area on the street after October 1st, 1955, that they occupied prior to October 1st, 1955?

A. I said that. I said at some of the stations we did. It was still a public street, though. It was not—

Q. And wasn't that space immediately adjacent to the door out of which the passengers came from the trains?

A. Yes.

Q. All right. Isn't it also true that you had Parmelee agents inside of the stations soliciting and hawking, as they say in the trade, passengers to take the Parmelee vehicles?

A. Not to my knowledge. We never had any—

Q. You were there, weren't you?

A. I never saw any inside. They were out on
1878 the sidewalk.

Q. But they were there?

A. Oh, yes.

Q. Now isn't it also true that at the IC station at Roosevelt Road and Michigan Avenue, the Parmelee vehicles after October 1st, 1955, occupied the same area outside that station as did the Keeshin vehicles?

A. I answered that before. I said yes, part of it.

Q. And you also had agents on duty at that station after October 1st?

A. That is correct.

Q. And didn't your agents obtain cash fares from these passengers?

A. Yes.

Q. How much was it?

A. Seventy-five cents.

Q. And didn't they also pick up transfer tickets from these passengers?

A. You mean the coupons?

Q. Coupons.

A. Yes, they did.

Q. Were they turned in to the company?

1879 A. Yes, they were.

Q. Your company, I mean.

A. Right.

Q. Do you know Mr. Markin?

A. Yes, I do.

Q. Has he ever given you any instructions in the course of your duties?

A. Any instructions?

Q. Yes.

A. I don't know quite what you are referring to.

Q. Well, has he ever directed you to do certain things in the course of your occupation?

A. No, sir, not that I know of.

Q. Well, who did?

A. Nobody did. I guess I know what I was supposed to do.

Q. You acted on your own?

A. I was put into a job, and I was supposed to do it to the best of my ability.

Q. Isn't it true that Mr. Markin asked you to make an investigation of what was going on at these various stations in 1956 and 1957?

A. He did not.

Q. Who did?

1880 A. Nobody did.

Q. Now you testified that you were at certain sta-

tions on your own, is that correct?

A. That is right.

Q. I believe one of the stations you mentioned was the Dearborn station?

A. I did.

Q. Do you know how many trains come into the Dearborn station in the morning?

A. Offhand I don't, but I know there is a good number of them.

Q. If I said six, would that refresh your memory?

A. I wouldn't be able to say.

Q. Isn't it true that they arrive about 7:15 in the morning?

A. Yes.

Q. How far do you live from the Dearborn station, your home?

A. How far do I live now?

Q. No, at that time in 1955, late, after October 1st?

A. Oh, I don't know, probably fifteen or sixteen miles.

Q. Now you got up, all on your own, early in the
1881 morning to get down to the Dearborn station to make an investigation at 7:15 in the morning, is that correct?

A. I used to start working regularly at 6:00 o'clock in the morning all the time that I was in my position of general superintendent. It was nothing out of the ordinary.

Q. Now you testified there were some people waiting after October 1st, 1955?

A. That is right.

Q. To get transferred, is that correct?

A. That is right.

Q. How did you know who they were, where they came from and where they were going?

A. How did I know?

Q. Yes.

A. They were waiting in your loading area.

Q. Weren't they waiting in the Parmelee area?

A. No sir, they were loading out of the west side of the station where the Keeshin cars were loading.

Q. You are sure they weren't waiting for Morris Markin's taxicabs?

A. They don't load cabs on that spot. The cabs 1882 are loaded in front.

By Mr. Freeman: May I make an observation—

By Mr. Keating: I object to an observation by counsel.

By Mr. Freeman: I want to object to the last question, and I move it be stricken.

By the Court: Objection sustained. It may be stricken. I will give the jurors a little time as long as we are going to continue a half hour. Five-minute recess.

(Thereupon a short recess was had, after which the following further proceedings were had herein:)

1883 By the Court: Proceed.

By Mr. Meserow:

Q. Mr. Krock, after October 1st, 1955, at North Western Station, isn't it true that the Parmelee vehicles were lined up on Canal Street on the west side of the street in a cab stand?

A. They were lined up on the west side of Canal Street, in the street, yes.

Q. In a cab stand?

A. I am not too clear whether it was a cab stand or not.

Q. It was a no parking area, wasn't it?

A. It was on the street.

Q. Along the sidewalk?

A. That is correct.

Q. And alongside the door which was an exit from the North Western Station, wasn't it?

A. That is right.

Q. Now immediately inside the door adjoining where your Parmelee vehicles were was the stand or booth of Railroad Transfer Service, wasn't it?

A. Yes, sir, I believe it was.

Q. And immediately to the right, about 10 or 15 1884 feet, were the escalator stairs up to the second floor?

A. That is right.

Q. And on the second floor was where the trains came in and the passengers came down the escalators?

A. That is right.

Q. Isn't it true that your agents and drivers came inside right at the same spot where the Railroad Transfer people were, and solicited passengers?

A. No, sir, they did not. They were standing out on the street and soliciting passengers out there. In the summertime, with the station doors open, you could hear them inside the station, but they were out on the sidewalk.

Q. In the wintertime, they came in to get warm, didn't they?

A. They may have, but they didn't do any soliciting.

Q. Now during the war years and shortly thereafter, Mr. Krock, isn't it true that when a contingent of large number of soldiers came into town and went from one station to another, that Parmelee, instead of taking them in their vehicles, had them marched over?

A. No, sir.

Q. Were they marched over?

A. Some of them may have marched over of their 1885 own volition. We never marched them over.

Q. You took the coupons for each of these service men, didn't you, the Parmelee representatives?

A. If they had checked baggage to go through, we did, yes. We felt we were entitled to it.

Q. Isn't it true on many occasions when sailors came in from the Great Lakes on the North Shore and came to the station at Adams Street and Wabash, and they were going to the Illinois Central Station at 12th Street, that your vehicles did not take them, but they were marched over to the I.C. Station?

A. No, sir. The sailors used to unload at the La Salle and Van Buren.

Q. I say that those that came in from Great Lakes on the North Shore.

A. Those that came in from Great Lakes on the North Shore is who I am talking about. They would unload at La Salle and Van Buren, walk down the stairway into the La Salle Street Station, and that is where we had our vehicles for them.

Q. They walked all the way over to the La Salle Street Station?

A. They got off the train at the La Salle Street Station.

1886 Q. On the North Shore?

A. That is right.

Q. And you took their tickets?

A. Yes, and we transferred them.

By Mr. Meserow: All right. That is all I have.

Redirect Examination by Mr. Freeman.

Q. Mr. Krock, did the Parmelee Transportation Company have any licenses from the City of Chicago authorizing the operation of their vehicles on the City streets?

A. Yes, we did.

Q. What was the nature of these licenses?

A. We had a terminal vehicle license.

By Mr. Thompson: We object to that as immaterial and improper redirect.

By the Court: He may answer.

By Mr. Meserow: What year? Let him fix the year.

By Mr. Thompson: I don't know what difference it makes.

By Mr. Freeman:

Q. Did you have the terminal vehicle licenses in 1955, 1956 and 1957?

1887 A. We did.

Q. And did these licenses authorize you to stand on the City streets where you did provide for your stands?

A. They did.

By Mr. Thompson: We object to the questions and the answers, not the best evidence, and move to strike the answers.

By Mr. Meserow: They also call for a legal conclusion which this witness is not competent to answer.

By the Court: I will let it stand.

By Mr. Freeman: I have nothing further of this witness. Thank you, your Honor.

(Witness excused.)

1888 By the Court: Call your next witness.

By Mr. McConnell: I will call Mr. Scheeder.

WILLIAM A. SCHEEDER, called as a witness by the Plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination By Mr. McConnell.

Q. Will you state your name, please?

A. William A. Scheeder.

Q. Where do you live, Mr. Scheeder?

A. 9945 South Oakley Avenue.

Q. What is your business or occupation?

A. I am vice president and director of Parmelee Transportation Company.

Q. How long have you been employed by that company?

A. Since October 1923.

Q. Will you tell us the various offices you have had in the company?

A. I was office manager, general baggage agent, general traffic manager, through a succession of positions became vice president and director.

Q. What experience did you have, if any, in the 1889 transportation field prior to the time that you came to the Parmelee Company?

A. Well, from 1909 to 1911, I was in the traffic department of Nelson Morris and Company, meat packers. From 1911 to 1923, I was in the baggage and mail department at LaSalle Street Station, the New York Central System and Rock Island Railroads.

Q. How long were you with the New York Central Railroad?

A. Twelve years.

Q. How long with the Rock Island?

A. Well, they are a joint operation. I was on both payrolls.

Q. What were your duties with the Parmelee Company?

A. I had to do with complaints, sales, services, special movements.

Q. In your dealings with the railroads when you were with the Parmelee Company, who did you deal with generally?

A. Generally with the passenger traffic department; also with others in the field at the stations, such as station managers and other departments.

Q. When you were with the Parmelee Company when they were doing the transfer business, which has
1890 been described here in this courtroom, did you belong to any railroad organizations?

A. Yes. I kept in close touch with the top echelon of the railroads as well as everybody involved in the traffic and passenger movements, and I became active in the Chicago Passenger Club, National Defense Transportation Association, American Association of Passenger Rate Men, Rotary Club, and so forth.

Q. Did you belong to an organization known as the National Defense Transportation Association?

A. I did.

Q. What was that organization?

A. Well, that was an organization formed mostly by transportation people during the war or shortly thereafter, which had the protection and security of the country uppermost in mind so that they could participate in any invasions of security and protection of the country in general in case of war.

Q. Was the Parmelee organization pledged to cooperate in any such defense?

A. Well, so-called pledge, as they have under the Civil Defense now, we were not, but during the war our president, Mr. Landman, wrote to Mayor Daley
1891 and offered the services to the city that may be required in connection with any disaster or difficulty that may arise during the difficulties.

By Mr. Thompson: I don't see what this rebuts, your Honor. This is improper rebuttal testimony.

By the Court: I don't see it either.

By Mr. McConnell: Well, they had a big to-do here about being a member of the Civil Defense.

By Mr. Thompson: Well, this doesn't rebut that.

By Mr. McConnell: And pointing out that they had

signs on their vehicles, and so forth. I am trying to show that we cooperated, too; that we weren't some renegade outfit that wasn't cooperating with civil defense.

By the Court: He is talking about the wartime and they are talking about since the contract.

By Mr. McConnell: Well, we haven't been there. The only time we can tell about is when we were there.

1892 By the Court: All right. Proceed.

By Mr. McConnell:

Q. Now, did you handle grievances and criticisms?

A. I did.

Q. If there were any, sent to the Parmelee people?

A. I did. They were infrequent.

Q. I was going to ask you that. Were they frequent or infrequent?

A. Infrequent, and comparatively few to the volume of traffic that we handled.

Q. How long did you have to do with handling criticisms and complaints?

A. Well, practically from the time I started with the company.

Q. Over all the time that you were there, how many complaints did you say you had had on your service?

A. Well, it is difficult to place the number, but rarely. I don't suppose they averaged one a week.

Q. How many passengers would you handle in the course of a week?

A. Well, that varied. During the war years it ran, it might run as high as 15,000 in a day, and in slower periods down to 2,000 or 2,500.

1893 Q. How about any criticisms as to the handling of baggage? Did you handle those?

A. I was in charge of the baggage department. Very rarely was there any criticism. The baggage was moved promptly.

Q. During your relationship with Parmelee, did you ever hear any railroad official criticize your service or your organization?

A. Well, the railroad people didn't criticize the method of our operation.

Q. Well, did you have any criticism from any railroad official as to the courtesy of your employees?

A. Well, we have had had some complimentary letters. We have had many complimentary reports on the prompt and expeditious manner in which we have handled people, and occasionally, although we tried to operate as nearly perfectly as possible, we occasionally would receive a complaint against an agent, but it was very, very rare.

Q. Now calling your attention to the five year period from 1951 to October 1st, 1955, what equipment did Parmelee use?

A. We had 85 limousine coaches, 51 straight job trucks, and four supervisors's cars.

1894 Q. What were the 85 limousine coaches? Describe them, if you can. Were they all the same?

A. Some were 7-passenger. 65 were 7-passenger type, and 20 were the 10-passenger type, especially constructed for this transfer service. They were easy to step into and out of. They had a large baggage compartment where the baggage would be kept separate from the passengers, and it would allow the passengers to enter the coach while we were loading the baggage, so the baggage was thoroughly protected from the elements, and in no way would the passengers, would there be any hardship on the passengers due to weather conditions.

Q. Was the baggage carried in the cab, I mean, in the vehicle, or up above?

A. No, in the rear, a specially built-in trunk compartment.

Q. Was it carried above?

A. No.

Q. None of this putting it on top?

A. No, sir.

Q. Now what were the baggage trucks? You said there were 51 baggage trucks. What were they? Describe those.

A. They were Dodge. They were one and a half
1895 ton, straight line — straight jobs. I think they call them — paneled trucks, enclosed, to keep the baggage protected from the elements with tailgates across the back to prevent any opportunity for loss.

Q. Those 85 limousines that you spoke about, you say they were manufactured to special specifications. Who manufactured them?

A. Checker Motor Corporation.

Q. That is the organization up in Kalamazoo that we have heard about?

A. Yes, sir.

Q. Who set up the specifications for those vehicles?

A. Well, that would be through Mr. Krock and our general manager, either Mr. Passolt or Mr. Rheintgen.

Q. Do you know whether those specifications were set up based upon the particular experience that the Parmelee company had in the handling of this job?

A. I believe they were based on the type of operation we were to perform.

Q. How often did you renew your equipment?

A. Well, it was the policy to renew it about every three or three and a half years.

Q. Was the policy followed?

A. Yes, sir.

Q. Now before this equipment was put into serv-
1896 ice, did you have any consultation with the railroad people as to whether or not it met their requirements?

A. Over the years when we were ready to make a changeover in equipment, it was the custom to confer with the top passenger officials as to the type of equipment we contemplated putting into operation.

1897 Q. At any time when the Parmelee people were doing this business, did the railroad officials, any railroad official ever request, as far as you know, that your vehicles be air conditioned?

A. They did not.

Q. Well, did anybody from the railroads ever request it?

A. They did not.

Q. Do you recall being present in the May 19 meeting with the committee of six?

A. Yes, sir.

Q. Who else was there from your company?

A. Mr. Markin, Mr. Rheintgen, Mr. Krock and myself.

Q. Was there any discussion there at that time about air conditioning?

A. Yes, there was.

Q. Can you tell us what was said by your people about it?

A. Well, Mr. Markin explained when questioned about air conditioning, of the proposed new equipment, that he didn't think it was feasible during the short trips between the stations with the frequent opening and closing of the doors, that it wouldn't be practical.

1898 Q. Did you express any opinion on it?

A. No, I did not.

Q. Was he the only one from your organization that expressed any opinion on it?

A. I think so.

Q. Was anyone on the committee expressing any opinion about it?

A. Yes, very much so.

Q. What did they say?

A. Mr. Whittington just kept repeating about air conditioning, but he didn't go into detail as to the benefits or the necessity for air conditioning, as I remember.

Q. Did anybody else there say anything about it?

A. No, I don't think any of the others said anything about air conditioning. Whittington seemed to have been the spokesman.

Q. What was the former kind of dispatch system that was utilized by Parmelee?

A. Well, we had an interconnection of long distance lines from our main office to all of the railroad terminals at the offices at the railroad stations where our passenger agents operated, and we also had an extension of
1899 those lines into the baggage end where the through baggage moved through so we could keep in constant touch with our baggage agents as well.

Q. Were those direct lines?

A. They were direct lines.

Q. Will you tell us what your experience was with that sort of dispatch equipment?

A. Well, we found it quite satisfactory. It enabled us to handle the operation very successfully.

Q. How long did it take to get a vehicle, one of your vehicles from your place of dispatch to the place you wanted it to go or the railroad stations?

A. Well, the vehicles were then at the various stations, and the dispatcher would get reports from the agents as to the time the trains were scheduled to arrive. When we had advance notice of the number of people arriving on trains, if there were special groups, as we frequently got advance notice, and the dispatcher could then arrange to have sufficient vehicles at whatever station this particular group was coming in, and they could concentrate

the vehicles on that station so they would be handled promptly to their outgoing station.

1900 Q. At any time your vehicle got to any station you could reach him on this intercommunication system?

A. It was relayed to our passenger agent who had full charge of these drivers, because he knew what the conditions were at that station, what his requirements would be, and if there would be any need for surplus vehicles at other stations that would immediately be transmitted to our dispatcher so that he knew that the service was protected at other terminals.

Q. How long would it take to get ahold of a vehicle to take it to another station by this dispatch system?

A. Well, right there where our agents were, a minimum of time. There is no lost motion for the agent to direct three or four, whatever may be required, those drivers to immediately depart to another station.

Q. Was there any discussion in the committee of this type of service?

A. I don't believe there was.

Q. Was there any criticism of it?

A. No.

Q. Did you ever have any criticism of it from the railroads at any time?

A. No. In fact, the railroads found it convenient

1901 at times to use the phone service rather than call outside lines in case they wanted to know about arrivals at other stations.

Q. Did you have any discussion with the committee about installing a dispatching system where you would have a two-way radio on your vehicles?

A. You mean at the May 19 meeting did we have a discussion?

Q. Yes.

A. That was brought up at the meeting.

Q. Did anybody from your organization say anything about that?

A. Mr. Markin again went into detail to explain to them about our board, as I recall it.

Q. What did he say about it?

A. He felt it was quite satisfactory and adequate to protect the service.

Q. Did anybody say that it wasn't?

A. I don't believe they did.

Q. What are these passenger agents that you talk about, what was their function and what did they do?

A. They are uniformed men that have designated sponsors at the various stations to meet the incoming trains and contact the passengers who were obliged to make the station transfers, and he would arrange 1902 to lift their transfer coupons and present them with tickets as authority to ride, and would direct them to where our coaches were located.

We had different locations at the various stations.

Q. How many transfer agents did you have at the time your service was taken over by Keeshin or his company?

A. I believe we had about 50 passenger agents and baggage agents as far as I remember.

Q. How many employees did you have at that time? At the end of your arrangements there with their railroads?

A. We had 120 drivers, and with the passenger agents and officer personnel and maintenance men, there were 80 to 83.

Q. So you had a little over 200 personnel all told?

A. That is right, and a supervisory staff, of course, is included in there.

Q. Going back to your dispatch system, was there any time that you can recall, as far as you know, when the railroads were critical of your dispatch system?

A. No.

Q. You never had any criticism of any kind?

1903 A. No, sir.

By Mr. McConnell: Is this a good time to stop?

By the Court: Yes.

Have a nice weekend and please don't discuss this case with anyone, and we will see you Monday morning at 10:00 o'clock.

(Thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: 10:30 for the lawyers.

(Thereupon an adjournment was taken in the hearing of the above-entitled case to Monday, May 9, 1960, at the hour of 10:30 o'clock a.m.)

1904 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Monday, May 9, 1960,
10:30 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant.
Hugh W. Cross;

1905 Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1906 And thereupon the following further proceedings were had herein;—

By the Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin, et al. The case on trial.

By the Court: Bring out the jury.

(And thereupon the following proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: Proceed.

WILLIAM A. SCHEEDER, called as a witness herein on behalf of the Plaintiff, in rebuttal, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. McConnell.

Q. Mr. Scheeder, did you ever suggest, on behalf of the Parmelee company, the use of station wagons or buses in this service?

A. Yes. In 1944 we presented a model of the station wagon, which the railroads rejected.

Q. Who did you present it to, do you recall?

1907 By Mr. Thompson: If the Court please, we object to this as not rebuttal of anything. If they are going to open up the case again, we will have to meet it.

By the Court: I will let him answer, briefly.

By Mr. McConnell: I thought I heard testimony here. I don't want to do anything—

By the Court: I will let him answer.

By Mr. McConnell:

Q. Do you recall the last question, or do you want it read to you?

A. I would like it read.

(Whereupon the record was read as above recorded.)

By the Witness:

A. I don't recall all the individuals, the top passenger officers of the Chicago Terminal Lines.

By Mr. McConnell:

Q. Can you give us just sort of a background sketch of the history of this Parmelee company as you recall it in your time there, I mean how it came into being, and so forth?

By Mr. Thompson: We object to that as imma-

1908 terial.

By the Court: Objection sustained.

By Mr. Thompson: And not proper rebuttal.

By the Court: That has been brought out, and it isn't rebuttal.

1909 By Mr. McConnell: Well, I thought there was some talk here about that it wasn't in existence 102 years ago, and so forth.

By the Court: I have no objection if you think it is to meet something.

By Mr. McConnell: That is all I am trying to do. They are trying to show it only came into existence during Mr. Markin's lifetime.

By the Court: All right. Read the question.

(Record read as above recorded.)

By the Witness:

A. Parmelee was founded in 1953—

By Mr. Thompson: If the Court please, I doubt if the witness was there in 1853. Objection.

By the Court: The objection is sustained.

By Mr. McConnell:

Q. Well, how long were you there?

A. During my work with railroad work and Parmelee, I can recall the Parmelee Transfer Company being the authorized transfer company engaged in the trans-
1910 ferring of passengers and baggage. The original company was—

By Mr. Thompson: If the Court please, the question was, "How long were you there?"

By the Court: Yes.

By Mr. Thompson: And we move to strike the answer as immaterial and not proper rebuttal.

By the Court: It may be stricken. How long of your own knowledge?

By the Witness: Of my own knowledge in 1929 the present Parmelee Company was acquired by Mr. Markin.

By Mr. McConnell:

Q. My question is, how long have you been there? I am talking about you as an individual, not the Parmelee Company.

A. How long have I what?

Q. How long were you there with the Parmelee Company?

A. I have been with the Parmelee Company for thirty-six years.

Q. Was that prior to 1929?

A. That was prior to 1929.

Q. Tell us when you started. That is what I am
1911 trying to get at.

A. When I started, the Parmelee Company was the Parmelee Transfer Company, which was subsequently acquired by M Markin and his associates in 1929 through stock acquisitions and has continued.

1912 Q. Do you recall any celebration of any kind in 1953?

A. We celebrated our centennial on May 9, 1953 and had received wide recognition by the railroads.

By Mr. Thompson: We move to strike the answer as not rebuttal to anything.

By the Court: It may be stricken.

By Mr. Thompson: And bringing in a completely new subject.

By the Court: It may be stricken.

By Mr. McConnell:

Q. Will you tell us what buildings or facilities in the way of buildings that Parmelee had and which they utilized in the carrying on of this transfer business?

By Mr. Thompson: We object to that.

By the Court: I think that has been covered.

By Mr. Thompson: It doesn't rebut anything.

By the Court: It has been covered, I thought, originally.

By Mr. McConnell: I don't recall it being covered.

By the Court: The garages and facilities. I beg pardon?

1913 By Mr. McConnell: On their case they talked about where they serviced their vehicles, and so forth. All I want to bring out is what we had in the way of facilities.

By the Court: If the jury has it, it is there.

By Mr. McConnell: I don't recall it being brought out. I may be wrong, but I don't remember it.

By the Court: All right. Very briefly. What buildings have you?

By the Witness:

A. The Parmelee company maintained a large building at 300 North DesPlaines Street, which housed our equipment. We had a maintenance shop, general office and a large platform for the sorting and disbursing of baggage, which was a substantial cost.

In addition thereto we had adjacent vacant property. Our maintenance work was done in this building and it housed all the vehicles.

By Mr. McConnell:

Q. Was that building owned by the Parmelee company?

A. It was leased until 1954 when it was purchased by Parmelee Transportation Company.

1914 Q. Now getting back to that May 19th meeting with the railroad committee, sub-Committee of Six, do you recall any discussion at that meeting about the escalator clause, so-called, in the Parmelee proposal, that is, where your rate was going to increase with the decrease in the number of passengers and vice-versa? Do you recall any discussion on that subject?

A. Yes. At the beginning of the meeting Mr. Markin said that he would drop that portion of his proposal.

Q. So that was dropped out and not taken up any further, is that correct?

A. Yes.

Q. At that meeting, what did Mr. Markin propose as to the procurement of new equipment by Parmelee, if anything?

A. At the meetings that Mr. Markin attended?

Q. No, the May 19th meeting.

A. The May 19 meeting, he told the committee that he proposed to spend $500,000 for new equipment to be procured within six months or a year. In fact, at that time our equipment was about ready to be renewed anyway.

Q. Was there any talk at that meeting about the handling of group traffic on a reduced rate?

1915 A. There was a discussion.

Q. What was said about that subject?

A. The question arose as to the cost of handling groups, large groups or groups on reduced rates, and Mr. Markin said that he would handle that traffic at the rate of 50 cents per person.

Q. Can you tell us whether or not when Parmelee was handling the transfer business, whether there was any extra charge for extra baggage of a passenger?

A. Well, there was no extra charge for baggage. The transfer coupon took care of all baggage that a person was using on his journey.

Q. No matter how many pieces?

A. That is right.

1916 Q. Do you know what the Keeshin Company did with reference to that when they came in?

A. Yes. In 1955, they applied a charge, regardless of the transfer coupon, for the transfer of a trunk from one station to another at $1.20 or for the first piece, $1.20. Additional trunks were charged for at the rate of 75 cents, and additional handbags at 50 cents each, and no consideration given the value of the transfer coupon.

Q. This service which is known as a pickup and delivery service, tell us what that was, please.

By Mr. Thompson: We object to it as improper rebuttal.

By Mr. McConnell: You went into it on your case.

By the Court: He may answer.

By the Witness:

A. The pickup and delivery service of baggage between the hotels, residences and the railroad stations was provided for by Parmelee seven days a week, including Sundays and holidays.

Q. Was that something that you did pursuant to the request of the railroads?

A. That was at the request of the railroads, being the authorized transfer company.

1917 By Mr. Thompson: We object to the hearsay testimony unless the persons--

By the Court: Objection sustained to the form of the answer.

By Mr. Thompson: Move to strike the answer.

By the Court: It may be stricken.

By Mr. McConnell:

Q. Do you recall any conversation you had with anybody about that subject from the railroads?

A. Yes. I received—you are speaking of the?

Q. Pickup and delivery service. Calling your attention to any conversation which you had with anybody from the railroads on that subject matter. Can you tell us if you did have such a conversation, who it was with?

A. I am afraid I don't quite understand your question. You are speaking now of the local pickup and delivery from the city residence to the railroad station?

Q. Yes, I am talking about that.

A. I beg pardon?

Q. I am referring to your testimony that the railroads required it. Who told you that? Who of the rail-

1918 roads told you they required that service?

A. Well, that—

By Mr. Thompson: I object, your Honor. That answer has been stricken.

By the Court: Sustained. Where did he have the conversation, with whom, what time, and who was present?

By the Witness:

A. The conversations were either in writing, the conversations with baggage traffic managers either orally or in writing. They were greatly interested—

By Mr. Thompson: Just a moment.

By the Court: Sustained.

By Mr. Thompson: I object to any voluntary answer.

By Mr. McConnell: All right.

By Mr. McConnell:

Q. Tell us the conversation you had with any of these traffic managers.

By Mr. Thompson: We object unless it is identified as to time, place, and persons present.

By the Court: He may state the conversation if he will designate the time and the place and who was present.

1919 By Mr. McConnell:

Q. Well, as near as you can. If you can't remember the exact date, say so. Give us an approximate time.

A. This is something that had been going on over a period of years. The service was—

By Mr. Thompson: We object to any volunteered answer. There is no question pending.

By the Court: Sustained.

By Mr. McConnell:

Q. All right. What was the conversation that was going on over a period of years?

By Mr. Thompson: We object to that.

By the Court: Sustained.

By Mr. McConnell:

Q. And with whom? Who did you have your conversation with, if you know?

A. The baggage traffic managers of the various railroads.

Q. Would you say all of them?

A. All of them, of the Chicago Terminal Lines.

Q. All right. Can you fix a date any closer than just over the period of your service? Would you say it was in each year?

A. It occurred whenever there was a change re-
1920 quested in the pickup and delivery charge, and those charges were incorporated in—

Q. No, I am just trying to fix the time now. Not with reference to something else.

A. The last change we had was in 1954.

Q. All right. Now, tell us what conversations you had with the railroad traffic managers in 1954, and where it was, if you can remember.

A. We wrote to the—

By Mr. Thompson: Just a moment. I am objecting. By the Witness:

A. (Continuing) We wrote to the chairman—

By Mr. Thompson: Mr. Scheeder, please. We object to it.

By the Court: If he wrote, let's have the correspondence.

By Mr. McConnell: I am not talking about a writing.

By Mr. Thompson: We object to the mass conversation with a lot of unidentified people. If they had it at a meeting where they were all present, that is one thing.

By the Court: Objection sustained.

1921 By Mr. McConnell:

Q. Did you have any conversations with the terminal managers on or about the middle of April 1954, on that subject?

A. The conversation that I recall in 1954 was a meet-

ing with Mr. Padrick about our pickup and delivery service.

1922 Q. Now, tell us what the conversation was.

A. That conversation was that the baggage and pickup and delivery service was to stand on its own. We were to obtain a rate that would compensate us for the service performed, and subsequently in order to establish this rate we wrote to the chairman of the passenger, the Railroad Passenger Associations, which consist of a Mr. Padrick of the Transcontinental Western Passenger Association, Mr. Winkler of the Trunk Lines Central Committee, Mr. Duggan of the Southeastern Passenger Association, and the chairman of the New England Passenger Association, proposing our baggage pickup—

By Mr. Thompson: We object to any recital of correspondence. If they have any, let's have it produced.

By the Court: Objection sustained.

By Mr. McConnell:

Q. Have you exhausted your recollection of that conversation with Padrick?

A. There was further conversation with Mr. Padrick.

Q. All right. You tell us what further was said.

A. The question of an additional charge for remains.

Q. No; I am just talking about the pickup and

1923 delivery service now. That is the subject I am directing your attention to.

A. I think that has been thoroughly covered.

Q. All right. Have you exhausted your recollection on it now?

A. Yes.

Q. Was there anything said in that conversation about the railroads wanting you to do that pickup and delivery service?

A. The pickup and delivery service was—

By Mr. Thompson: Just a minute.

By Mr. McConnell:

Q. Just listen to th question.

By Mr. Thompson: It can be answered "Yes" or "No."

By the Witness:

A. Yes.

By Mr. McConnell:

Q. All right; tell us what was said about it.

A. The pickup and delivery service was to stand on its own as far as the charges were concerned.

Q. Well, was there anything further said about the railroads wanting you to perform this service for the traveling public?

1924 A. Well, the practice, usage. There was nothing definitely said that it shouldn't remain. The question all hinged on the fact of charges.

Q. All right.

Do you know whether that pickup and delivery service was continued by the Parmelee, or rather, by the Keeshin company after they took over the service?

A. Yes.

Q. Was it the same service?

By Mr. Thompson: We object to that as calling for a conclusion.

By the Court: Objection sustained.

By Mr. McConnell:

Q. Well, you told us that you picked up and delivered seven days a week. Do you know how many days a week the Keeshin company picked up and delivered baggage?

A. They cut out the Sundays and holidays with the exception of the central business district.

Q. Did you have a service when the Parmelee company was rendering this transfer service whereby the passenger going to a downtown hotel or downtown or

Loop destination could travel in your equipment for the coupon?

A. Yes.

1925 By Mr. Thompson: We object to that as immaterial and not proper rebuttal and move to strike the answer.

By Mr. McConnell: You went into that question.

By Mr. Thompson: We did not. You went into it.

By the Court: The objection is sustained. It has been covered.

By Mr. McConnell:

Q. Do you know whether or not the Keeshin service permitted the passenger to travel on the coupon to the Loop area?

By Mr. Thompson: That is immaterial.

By the Court: Same objection, same ruling, sustained. It has been covered.

By Mr. McConnell:

Q. Do you know about a service rendered by the Parmelee Company at the Englewood Station at the time you had this business?

A. Yes.

By Mr. Thompson: We object to that as improper rebuttal.

By the Court: That has been covered. Sus-
1926 tained.

By Mr. McConnell: That has never been covered.

By the Court: If you say it hasn't, I will let him answer.

By Mr. McConnell: I have never covered it.

By Mr. Meserow: Yes, it has.

By Mr. Thompson: It was discussed by your testimony. We never touched it.

By Mr. McConnell: That is all right. You are showing what your service was.

By the Court: I have heard it before, but if you say it isn't, I will let him answer it.

By Mr. McConnell:

Q. Do you know the question now? Do you have it in your mind?

A. Yes.

Q. All right.

A. We arranged for passengers to transfer between railroads at the four stations located in the Englewood district on 63rd Street. They would transfer on their coupon, and we would reimburse the taxi company 1927 for the service that they performed.

Q. Was that so all during the time the Parmelee Company, or while you were there, at least, with the Parmelee Company?

A. That service was in effect during my course of employment, and when Keeshin—and Keeshin dropped that service.

By Mr. Meserow: Your Honor, he has been asked questions, and he has testified about what Keeshin is doing. There is no foundation that he knows anything about Keeshin's business.

By the Court: The objection is sustained to the last part. It may be stricken.

By Mr. McConnell: So that your Honor will have what the purpose of that testimony was, you will recall that I asked Mr. Padrick on cross examination about this Englewood Station service, which fixed it in your Honor's mind.

By the Court: He covered it, the other witness, but there is no foundation for his knowledge.

By Mr. McConnell: I am not talking about 1928 Keeshin. That is all right for that to go out.

By the Court: I only struck the last part.

By Mr. McConnell: That is all right, but I am saying that this evidence of what happened at the Englewood Station, as offered, is impeaching evidence of the testimony of Mr. Padrick that we had no such service.

1929 By the Court: I only struck the last part of the sentence, what Keeshin is doing. There was no foundation laid for it.

By Mr. McConnell:

Q. Do you know what the rates were that were charged by the Parmelee company for pickup and delivery service?

By Mr. Thompson: We object to that as immaterial and not rebuttal.

By the Court: It has been covered several times.

By Mr. McConnell: There is no evidence here of what our rate was.

By Mr. Freeman: None whatever.

By the Court: I thought there was.

By Mr. Thompson: There isn't any evidence, your Honor, as to what the rate was. I agree with that, but we submit it doesn't rebut anything.

By Mr. McConnell: It does rebut it, because we rendered a service which you do not render.

By Mr. Thompson: They are trying to rebut their own cross examination of some of these witnesses. Mr. Padrick's testimony on the Englewood Station was

1930 cross examination. He didn't testify—

By the Court: What do you mean by standing on its own, independent of the contract?

By the Witness: What is your question, Judge?

By the Court: When you said before in your conversation with the passenger agent that the pickup service would stand on its own, what did you mean by that?

By the Witness: That was in connection with the rate increase that we had applied for in 1954.

By the Court: Was that covered by the contract?

By the Witness: No written contract.

By the Court: The objection is sustained.

By Mr. McConnell: We never had a contract, your Honor. That is all established by the evidence here. We were doing this on an at-will basis.

By Mr. Thompson: Which is a contract as long as it is in operation.

By the Court: Objection sustained.

1931 By Mr. McConnell: You may cross examine.

Cross Examination by Mr. Thompson.

Q. Mr. Scheeder, this pickup and delivery service was a matter of private contract between the Parmelee company and the customer, wasn't it?

By Mr. McConnell: That calls for a conclusion, a legal conclusion on the facts.

By the Court: He may answer.

By the Witness:

A. That is a service in which t' railroads were—

By Mr. Thompson:

Q. Just answer my question, please, if you can.

By Mr. McConnell: Let him finish his answer, and if you don't like it, you can strike it. I object to interfering with the witness' answer.

By the Court: Objection sustained to that, Mr. McConnell. Proceed.

By Mr. Thompson: Read the question.

(Whereupon the record was read as above recorded.)

By Mr. McConnell: He started to give his answer, and Judge Thompson interrupted him.

1932 By the Court: It calls or a "Yes" or "No" answer.

By the Witness:

A. The customer would call us direct or he would have his arrangements made by a travel agent or a railroad agent to call at his house and pick up his baggage to be taken to a railroad station.

By Mr. Thompson:

Q. And the customer paid you?

A. The customer paid us.

1933 Q. And you fixed the charge?

A. Yes.

Q. You say that you had few complaints, probably not over one a week during the time Parmelee was rendering this service of interstation transfer, I mean. How would these complaints come to you?

A. Generally by telephone.

Q. The station agent would call you and tell you that there were a lot of people waiting for service, and ask you to get some cabs over there?

By Mr. McConnell: I object to that. If he is going to prove that, we are entitled to know when it was and what the conversation was.

By the Court: He is cross-examining. He has a right to ask.

By Mr. McConnell: He can't answer that question without assuming something which is not in evidence.

By the Court: The witness may say so.

By the Witness: Will you read the question?

(Record read as above recorded.)

By the Witness:

1934 A. Not necessarily for a lot of people. There might be an irregularity.

By Mr. Thompson:

Q. Well, were there ever telephone calls that there were an inadequate number of vehicles to move the passengers?

A. There may have been instances when they would say there were no vehicles available, but the records indicate the vehicles were on the way and an immediate check was made to ascertain if any and what fault existed.

Q. What records indicated the vehicles were on the way?

A. The dispatcher's records.

Q. The dispatcher's records. When you called up, he sent some vehicles on the way, is that right?

A. That is right.

Q. In other words, he had undertaken to get some there?

A. He had already arranged before that call came in, or he may have arranged afterwards, but he always knew what was coming in so that he could provide the service necessary.

Q. Anyway, they were by oral communication?

1935 A. Generally.

Q. And the communications would come to you, would they?

A. In most instances.

Q. When they came to you, then what did you do, call the dispatcher?

A. I immediately contacted the dispatcher or our superintendent and ascertained if there was any fault.

Q. And then after you did that, then they started calling around trying to get some cabs, is that it?

A. Well, I think that was—that already had been taken care of.

By Mr. McConnell: I object to this highly speculative line. They are both speculating back and forth of what might have happened at some unknown time.

By the Court: Overruled. It must be dealt with by speculation when you are covering a period of a long time.

By Mr. Thompson:

Q. If it was telephoned to you that there were no cabs at the station and people were waiting, just tell us what happened from then on.

A. It was our method of communication to get
1936 vehicles over to the designated spot as soon as possible.

Q. How did you do it? I say what happened after you got the complaint from the passenger representative?

A. The dispatcher arranged to—

1937 Q. You called the dispatcher, is that the next thing?

A. Yes.

Q. All right. Then you told your dispatcher there were no cabs at the LaSalle Street Station?

A. I asked him how the situation looked of cabs going to LaSalle Street Station because they stated there was additional vehicles required or there was a shortage, and the records indicated then—

Q. No, we are not interested in records. What did the dispatcher do then? Did he tell you—

By Mr. McConnell: I object to what the dispatcher did unless he knows what he did.

By Mr. Thompson:

Q. He is talking to the dispatcher. Did the dispatcher tell you there were cabs on the way?

A. They assured me there was.

Q. Did you do anything further to find out whether that was so?

A. I have checked back to make sure that everything was taken care of.

Q. You checked back the station then and said, "Have you got any cabs there yet?"?

A. No, sir, I checked up with the dispatcher.

1938 Q. Oh, with the dispatcher.

Did you ever check with the station agent?

A. There may have been instances. There is no necessity of going any further. The dispatcher had the record.

Q. You didn't check back with the agent to see if people were still standing there waiting for service?

A. I would in some instances.

Q. Now in addition to getting these complaints by telephone, did you get them in any other fashion?

A. Occasionally a letter may come through after a passenger passed through Chicago and they have had some difficulty, which was very infrequent.

Q. Did a railroad representative just hand you these letters without any record of transmission part of the time?

A. No, those letters would generally come through the mail. They would transmit them or they would write us, quoting a passenger's statement, enabling us to make an investigation to develop what, if anything, had transpired to cause the complaint.

Q. Now did this communication system you had—I will strike that.

By this communication system you had, you

1939 couldn't communicate with the driver after he had left a location and was on his way to another one?

A. There was no necessity of communicating with the driver.

Q. Well, if a driver left the North Western Station over here on Madison and Canal, taking two passengers across town to the Illinois Central Station at 12th and Michigan, and a telephone call came in that there were two people at the Grand Central Station wanting to go to the Illinois Central, you couldn't communicate with the driver to stop by and pick up those two people?

A. Oh, no. He wouldn't stop en route to pick up others. He would go direct with his load.

Q. But if you had the two-way radio system, you could have done that?

A. It could have been done, but there would be no necessity for it.

Q. If you had a call from the Illinois Central that some more cabs were needed there, and you cleared through your dispatcher, as you say, then who called the cabs for the service at the Illinois Central, the dispatcher?

A. It may not be necessary to call. His record might indicate there was sufficient vehicles on the way.

1940 Q. Yes, but how did you find out whether they ever got there?

A. Well, because they would have passengers. They would have to leave there again because the agent at the Illinois Central would report to the dispatcher when certain vehicles left there again so he—

Q. What if the cabs were not there when he called you? How did the communication get to the other stations to get cabs there?

A. Well, I don't know of any instance where a cab or a vehicle got lost between stations. If they were on their way over there, they would get there generally with passengers, or even if they were empty, they would get there. The records would indicate it and the agents at the receiving station knew there were cars coming there, and he would report back to the dispatcher what cars had left so if one got lost somewhere en route, the dispatcher certainly would know about it.

1941 Q. It wasn't a question of getting lost. It was a question of whether they were ever sent and how did you find out whether they were ever sent?

A. Because the dispatcher got a record from the sending station.

Q. And then if the sending station's record was not accurate, why, the dispatcher never found out about it, just let the people stand over at the Illinois Central?

A. Well, the dispatcher would find out about it.

Q. Well, that was the system you had, anyway?

A. That is right.

Q. Telephoning back and forth from one place to the other?

A. That is right.

Q. Now you have the radio two-way communication on your taxicabs, don't you, the Parmelee taxicabs, the Yellows and the Checkers?

By Mr. McConnell: There is no showing that this man ever worked for any of those companies. I never asked him a thing about what the cab companies did.

By the Court: Read the question, please.

1942 (The question was read as above recorded.)

By the Court: He may answer.

By Mr. McConnell: Parmelee isn't operating any taxicabs, your Honor, and this man never has had anything to do with taxicabs so far as I know.

By Mr. Thompson: Well, Parmelee owns—

By the Court: Forty-five percent.

By Mr. Thompson: A hundred percent.

By Mr. McConnell: Forty-five percent.

By Mr. Thompson: Some of them.

By the Court: He may answer.

By the Witness:

A. I don't have anything to do with the operation of taxicabs.

By Mr. Thompson:

Q. You don't know whether they have got radios in them or not?

A. I see radio aerials on the cabs.

Q. Do you ever ride in one of the cabs?

A. I do.

Q. You hear the radio conversations, don't you?

A. No, the radio is shut off whenever I ride in a cab.

1943 Q. You never heard any communications being made over the radio while you were in a cab?

A. Not that I can remember.

By the Court: Mr. McConnell said that they operated under no contract with the railroads up to 1955, is that right?

By the Witness: That is right.

By the Court: Was there any bid submitted by Parmelee, or in the bid submitted, did that cover pickups?

By the Witness: The pickup of baggage was independent from the transfer coupon.

By the Court: It wasn't contained in the bid?

By the Witness: No, that was separate from the transfer coupon bid.

By the Court: All right.

By Mr. Thompson:

Q. When you say they operated without a contract, you mean over the years, prior to 1955, you mean they had no written formal contract?

A. There was no written contract with any other railroads except the Nickel Plate.

Q. And that was confirmation of what the arrange-

1944 ment was with all the rest of them, wasn't it?

By Mr. McConnell: I object to that.

That is a conclusion.

By the Court: Sustained.

By Mr. Thompson:

Q. Anyway, the service was arranged by oral agreements between the terminal lines representatives and the railroads?

A. That is right—

Q. I mean and the Parmelee people.

A. That is right.

Q. There was never any time when there was private arrangement made between a railroad and the Parmelee people except this one instance you have mentioned?

A. No.

Q. Always the Parmelee folks when they wanted a change in the transfer charge or other arrangements, they appeared before a meeting of the representatives of the terminal lines to present their cause, don't they?

A. Yes.

Q. And so in each and every instance, 1948, 1952, 1954, the arrangement that were made were made by representatives of all the railroads acting in a group and the 1945 Parmelee representatives dealing with them directly?

By Mr. McConnell: Now wait a minute. I object to that. There isn't any evidence of that in this record, and this witness wasn't examined on it on direct.

By the Court: I think the jury has heard that before and it has been gone over.

By Mr. Thompson: Well, I think—

By Mr. McConnell: I didn't go into it on direct. I said nothing at all about that.

By the Court: I will sustain the objection.

By Mr. Thompson: It is easier to answer the question than to argue objections.

By Mr. McConnell: I know. Foxy old guy.

By the Court: I will sustain the objection.

By Mr. McConnell: Put a whole mouthful of—all right. Go ahead.

By the Court: I didn't hear that.

By Mr. McConnell: I was talking to the Judge on
1946 the side. I will take it back. I won't say any more. Not you, your Honor; this judge.

By the Court: Yes, I understand.

By Mr. Thompson: Are you through?

By Mr. McConnell: I am all through, Judge. Go right ahead.

1947 By Mr. Thompson:

Q. Now getting back to the lawsuit, can you answer the question that I just asked?

By Mr. McConnell: His Honor sustained the objection to it, I thought.

By the Court: I sustained the objection because it is not proper cross examination.

By Mr. Thompson: All right.

By the Court: Wait a minute.

Does it go to the existence of a contract?

By Mr. Thompson: Yes, he asked—

By Mr. McConnell: No, it doesn't go to that at all.

By Mr. Thompson: He asked how it was made and all about it. He asked about the contract; I didn't.

By the Court: What the Judge is trying to establish is the existence of an oral contract from time to time. You say there was no contract. I will let him prove it.

Proceed.

By Mr. Thompson: Yes. Now I will ask the question—

1948 By Mr. McConnell: I object to this man testifying about anything unless he was present.

By the Court: That is right.

I will sustain the objection unless he was present.

By Mr. Thompson: Well, we will fix that up pretty quick.

By Mr. Thompson:

Q. Did you attend these meetings of the representatives of the Terminal Lines as one of the spokesmen for Parmelee?

A. I attended the meetings.

Q. And while Landman was president and alive, he attended with you?

A. Yes.

Q. Is that right?

A. Yes.

Q. You were vice-president during all this period we are talking about from 1940 on?

A. Yes.

Q. And when Mr. Passolt took over as president, he attended with you?

A. Yes.

1949 Q. And in the later years, after Passolt's death, when Mr. Markin took over—

A. Yes.

Q. And Mr. Markin and you and Mr. Rheintgen and Mr. Krock all attended these passenger representative meetings?

A. Which meetings?

Q. The meetings of the so-called Chicago Terminal Lines, the representatives from the passenger departments.

A. Well how far back are you going?

Q. I am talking about when you were arranging these contracts in 1948, I mean these charges in 1948 and 1952 and 1954.

A. Well, in 1948 Mr. Rheintgen I don't think attended.

Q. No, but I am saying you attended and these other men in succession.

A. I attended.

Q. You were there at all times, whichever one of the others attended?

A. I think I attended all the meetings.

Q. Yes. Now, then, the Parmelee people then presented their case to the representatives of the Terminal Lines in asking for a fixing of the transfer fare?

1950 By Mr. McConnell: I object to that overall summary of the thing. If it has any importance at all, which I dispute, it has to do with the negotiations for coupon rate, when finally they got a coupon rate which is in evidence, and we have got his own witness who testified how it was done and said it was an arrangement at will.

By the Court: He may answer.

By the Witness: May I have the question?

By Mr. Thompson:

Q. Parmelee presented their case to the representatives of the Terminal Lines, didn't they?

A. Yes.

Q. And then the railroads either agreed or disagreed after discussion and negotiation?

A. Yes.

Q. And the arrangement then, whatever it was, was among the railroads all acting together on the one hand and the Parmelee company on the other hand?

1951 By Mr. McConnell: Wait a minute. I object to that conclusion that the railroads all acting together on the one hand. The evidence is just to the contrary.

By the Court: Overruled. He may answer.

By the Witness:

A. Yes.

By Mr. Thompson:

Q. All right. Now this agreement that was finally

reached was evidenced by minutes of proceedings that were published by the terminal line group through Mr. Padrick, was it not?

A. Yes, proceedings were published.

Q. And the proceedings which had to do with the arrangements for the intersection transfer service were mimeographed or multiplied by some process, and Parmelee always received a copy of it?

A. Yes. There may have been instances when it was covered by letter.

Q. Yes. In other words, there was a confirmation of—

By Mr. McConnell: I object to this speculation about this. Either something happened or it didn't.

1952 By the Court: It is your witness.

By Mr. McConnll: I know. I didn't examine him on this subject.

By the Court: He may answer. The answer may stand.

By Mr. Thompson:

Q. Anyway, that was after the agreement was reached it was confirmed in some fashion, wasn't it?

A. Yes.

Q. So you knew your deal was?

A. Yes.

Q. All right. Now getting back to this matter of complaints—

I will ask that his be marked Defendants' Exhibit 43 for identification.

(Thereupon the said document was marked Defendants' Exhibit 43 for identification.)

By Mr. Thompson:

Q. Showing you Defendants' Exhibit 43 for identification, did you receive that communication?

A. It is addressed to me. I assume I did. I can't remember it.

Q. You don't remember any incident like that re-
1953 cited in that communication?

A. Back in 1951, I don't recall the incident.

Q. But you did receive the communication?

A. Being addressed to me, I presume I did.

By the Court: We will take a short recess.

(Thereupon a short recess was had, after which the following further proceedings were had herein:)

1954 By the Court: Bring out the jury.

(And thereupon the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By Mr. Thompson: Mark these as Defendants' Exhibits 44 to 62, inclusive, for identification.

(Thereupon said documents were marked, respectively, as Defendants' Exhibits Nos. 44 through 62, both inclusive, for identification.)

By the Court: Proceed.

By Mr. Thompson:

Q. I direct your attention to the document marked Defendants' Exhibit No. 45 and inquire whether you received that complaint.

By Mr. McConnell: I object to his characterization of the document. It isn't in evidence.

By the Court: The characterization may be stricken, just "this document."

By Mr. Thompson: That is right; I am sorry.

By the Witness:

1955 A. I assume we received it, and it a copy of my answer. I don't remember it at this late date.

By Mr. Thompson:

Q. There is no doubt about your receiving it, is there?

A. I don't believe so.

By Mr. McConnell: The witness says he doesn't remember.

By the Court: Proceed.

By Mr. Thompson:

Q. Does this document refresh your recollection as to whether you did receive it or not, this letter of February 9, 1949?

A. It is my letter, a copy of my letter.

Q. So you did receive it?

A. Yes.

Q. Exhibit 45?

A. Yes.

Q. I show you a document marked Defendants' Exhibit No. 47, for identification, which is a handwritten document, and ask you if you received that.

A. I received Mr. Kimbel's letter of March 12, 1951. I didn't receive this penciled memorandum, and I see my answer here of March 15, 1951.

1956 Q. The copy of the penciled memorandum was quoted in Mr. Kimbel's letter, wasn't it?

A. Yes.

By Mr. Thompson: The witness has referred to Mr. Kimbel's letter, and I ask to have it marked as Defendants' Exhibit No. 47-A, for identification.

(Thereupon the said document was marked Defendants' Exhibit 47-A for identification.)

By Mr. Thompson:

Q. Referring to Defendants' Exhibit 48, did you receive that document in the regular course of the mail?

A. This copy doesn't show from what railroad. It was apparently from Mr. Bone of my answer to him of December 28, 1951.

Q. The question is, did you receive the complaint or the document?

A. I assume I did in accordance with my reply.

Q. Defendants' Exhibit No. 49, did you receive that document?

A. Yes.

Q. And Defendants' Exhibit No. 50, did you re-
1957 ceive that document either through the mail or by having it handed to you by the railroad?

A. Yes.

Q. And Defendants' Exhibit 51, did you receive a copy of that memorandum?

A. I don't remember.

Q. And Defendants' Exhibit 52, did you receive that document?

A. Yes.

Q. And Defendants' Exhibit 53?

A. It being addressed to me, I assume I received it. I don't remember.

Q. You have no doubt about it, do you?

A. I don't think there should be any doubt.

Q. And Defendants' Exhibit No. 54, did you receive that document?

A. Yes, it indicates I did.

Q. And Defendants' Exhibit 55?

A. Yes.

Q. Defendants' Exhibit 56?

A. There is nothing here to indicate that I received it, and I don't remember it.

Q. You don't have any recollection of it?

A. No.

1958 Q. And Defendants' Exhibit 57?

A. I remember this letter from Mr. Butford to me of July 1, 1954.

Q. Was there enclosed with it this letter from Sheer to Butford of August 5, 1954?

A. I don't remember. It doesn't indicate so here. I don't think I have seen that.

Q. And Defendants' Exhibit 58, did you receive that document?

A. No.

Q. And Defendants' Exhibit 59?

A. Yes.

Q. Defendants' Exhibit 61?

A. No, I didn't receive this.

1959 Q. Defendants' Exhibit 44?

A. No, I didn't get that.

Q. Defendants' Exhibit 62?

A. I did not see that.

By Mr. Thompson: We offer in evidence Defendants' Exhibits 43, 45, 47 and 47-A—

By Mr. McConnell: Do you want me to object to these all at one time or what?

By Mr. Thompson: I don't care.

By the Court: I would suggest, Judge, if I may, to save time, that you submit them all to counsel.

By Mr. McConnell: If he will leave them with me over the noon hour maybe some of them I won't object to.

By the Court: Yes. I want to recess at 12:30.

By Mr. Freeman: I had suggested that to Mr. Thompson, your Honor, at the time of the recess.

By the Court: I have a luncheon meeting with Judge Hastings at 12:45, and so we will recess until 2:15. I have got to meet him at the Drake. In the meantime, you

1960 can look at those and go on with your cross examination.

I am sorry. Do you want to go on with examination on these documents?

By Mr. Freeman: Let's see what he wants to offer.

By Mr. Thompson: I am offering only those that he has acknowledged.

I offer Defendants' Exhibits 48, 49, 50, 52, 53, 54, 55, 57, and 59.

I think the rest of them were not identified.

When do you want to adjourn, your Honor?

By the Court: If you can go on without them, go ahead. We will recess at 12:30 and come back at 2:15. If you cannot go on, we will recess now.

By Mr. Thompson: No, I can go on.

By Mr. Thompson:

Q. This two-a-day transfer of baggage was instituted in 1954, wasn't it?

A. Yes.

Q. That transfer occurred at what hours of the day, approximately?

1961 A. Well, approximately between 8:00 and 5:00.

Q. But there was a morning delivery, was there, and an afternoon delivery, transfer, I mean, is that right?

A. That is about the way it would work out, depending on the arrival of the trains at the various stations.

Q. There were only two transfers a day, whatever time the trains arrived?

A. Plus what was augmented to those two depending upon the volume of traffic.

Q. And that, of course, was a special charge?

A. No, sir.

Q. $7.50 an hour for any extra time?

A. No, sir, not for that class of traffic.

1962 Q. Transfer took place about ten o'clock in the morning, before or after, depending on the station, and again about four o'clock in the afternoon, didn't it?

A. Generally.

Q. So that a passenger arriving with baggage for interstation transfer that arrived after four o'clock in the

afternoon, the baggage wouldn't be transferred until the next morning, the morning delivery?

A. That is right.

Q. Now on this matter of pickup and delivery, just for one other question, that service is open to anybody that wants to render it, isn't it?

A. No, because it was made through a deal with the railroads that we would perform that service.

Q. You mean to say, nobody else picks up and delivers baggage for customers?

A. Not on the system that the authorized transfer company had, which was Parmelee.

Q. What kind of authority did it have?

A. We had baggage checks supplied to us by the Chicago Terminal Lines, which enabled us to check a passenger's baggage through from his residence to final
1963 destination in connection with his railroad ticket.

Q. Yes.

A. Other transfer companies could arrange to pick up baggage and take it to the station only, and the passenger would have to arrange to do his own rechecking.

Q. Well, the transfer company could check it through, too, couldn't it?

A. No, sir.

Q. Does Parmelee still render that transfer service?

A. No, sir.

Q. The pickup and delivery service?

A. No, sir.

Q. How long since they discontinued doing that?

A. They discontinued that on September 30, 1955.

Q. You didn't perform any pickup and delivery service in that area after that date?

A. We did.

Q. That is what I asked you. I say you did perform it after that date?

A. We did.

Q. All right. Then why do you say you discontinued it September 30, 1955?

A. We didn't use the railroad checks after September 30, 1955.

1964 Q. But you did render the pickup and delivery service?

A. The local pickup and delivery between residences in the City of Chicago and suburbs.

Q. And you brought it down to the stations and checked it through to the destinations?

A. We brought it to the station and the passenger would arrange to check it through to the destination.

Q. You gave him a check for the baggage when you took it from home which was exchanged down at the station, is that right?

A. Right.

Q. Is that it?

A. Right.

Q. Now then, this transfer service out at Englewood that you talked about or at least this 63rd Street transfer service, how many railroads have 63rd Street stations?

A. At the Woodlawn Station, 63rd and Dorchester, the Illinois Central, Michigan Central and the Big Four—at the Englewood Station at 63rd and LaSalle, the New York Central, Rock Island and Nickel Plate.

Q. And the Pennsylvania?

A. And the Pennsylvania.

1965 Q. All right.

A. At 63rd and Wallace, Western Indiana Station, Erie, C&EI, Monon, Wabash.

The 63rd and Central Park, Grand Trunk Station.

Q. And the B&O Station is still on west?

A. 63rd and Leavitt, the B&O and Pere Marquette.

Q. Now, then, was this transfer service you talk about where you could transfer on a coupon, did it cover all of those stations?

A. Yes, sir.

Q. And what it amounted to is that the transfer company took the coupon from the passenger's ticket and gave it to the taxi driver, is that it?

A. The station agent or the taxi driver would receive the coupon from the passenger and honor that for his ride between any of the stations in the Englewood district.

Q. Without any payment to the taxi fellow?

A. If the fare ran more than the value of the coupon, the passenger paid the additional sum.

Q. So all it did was get the credit for the ticket?

A. The value of the coupon.

Q. Which the railroad had furnished to the customer?

1966 A. Right.

Q. Of course, that again was Yellow cabs and Checker cabs that were getting the business?

By Mr. McConnell: I object to that whether they were or weren't. There are other cab companies.

By the Court: Objection sustained.

By Mr. Thompson: All right.

By Mr. Thompson:

Q. Will you describe for us this seven passenger limousine you keep talking about?

A. The vehicle was a specially constructed vehicle for this transfer service with six passengers in the rear and one passenger seated with the driver in the front seat and a specially built baggage department separate from the passengers.

Q. Six passengers behind the driver's seat?

A. That was the maximum—five passengers, I should say. There are two jump seats.

Q. Two jump seats?

A. Five passenger and one in front—six, and the driver was considered as the seventh passenger. It was called a seven passenger vehicle.

Q. You call it a limousine, don't you?

1967 A. A limousine.

Q. That is three people sat on the back seat?

A. Right.

Q. And then there were two jump seats?

A. Right.

Q. And two or three people sat there—sometimes you put three in there, didn't you?

A. You could.

Q. Spreading across the space between the two jump seats with one sitting in the middle?

A. Right.

Q. And then you had a front seat, and could you put two with the driver sometimes?

A. Not very well.

1968 Q. In order to make it a seven-passenger vehicle, you had to have three in the jump seats?

A. Right.

Q. That is exactly the same sort of arrangement that is in the regular Yellow cabs, isn't it?

By Mr. McConnell: I don't know what this witness knows about Yellow cabs.

By Mr. Thompson: Let the witness answer.

By Mr. McConnell: I didn't qualify him as an expert on Yellow cabs. I don't think he knows anything about it.

By Mr. Thompson: I think everybody in Chicago that ever lived here knows.

By the Court: He may answer.

By Mr. Thompson:

Q. What is the answer?

A. I believe the cabs have two jump seats.

Q. You have been in Yellow cabs, haven't you?

A. I have ridden in them.

Q. And you know they have two jump seats, don't you?

A. I believe there are two jump seats.

Q. You know they are exactly like the so-called
1969 limousines you were talking about, as far as the interior of the body is concerned?

A. Approximately the same.

Q. And the baggage compartment is the same as the baggage compartments in Yellow cabs if they didn't lock the baggage compartment so you couldn't use it, isn't that true, of the cab?

A. I don't remember seeing a baggage compartment of a cab. I never saw one.

Q. There is a trunk back there, is there?

A. I don't know.

By Mr. McConnell: I object to his testifying about this subject.

By Mr. Thompson: I am cross-examining, if you don't recognize it.

By Mr. McConnell: I recognize it is cross examination, but that doesn't mean you are testifying here as an expert on Yellow cabs.

By the Court: He may answer. It is not as an expert. It is what they have.

By the Witness:

A. I don't know if there is a trunk compartment there or not.

1970 By Mr. Thompson:

Q. You have seen the rear end of a Yellow cab, haven't you?

A. Yes, I have seen the rear end.

Q. It doesn't flatten off like the wall here?

A. It is a design.

Q. There is a typical trunk style back there, isn't there?

A. Well, it is the rear end style.

Q. You couldn't tell the difference between one of these seven-passenger limousines you are talking about and a Yellow cab that was sitting side by side on a street, except it had the name painted on it and the color, a different color and a different name?

A. They were closely related.

Q. Not only closely related, they were made by the same mold, weren't they?

A. I don't know.

A. Yes.

Q. That is this Checker Motors Corporation up at Kalamazoo, Michigan who made the Yellow cabs?

1971 By Mr. McConnell: I object to that. There is no evidence that they make all the Yellow cabs, and they don't.

By the Court: Yes, sustained.

By Mr. Thompson: Thank you for your testimony. You seem to be an expert on the subject.

By Mr. Thompson:

Q. Anyway, asking you, Mr. Scheeder, do the Yellow cabs come from the Checker Motors Corporation?

By Mr. McConnell: I thought your Honor sustained an objection to that question.

By the Court: If he knows he may answer. It is a different question.

1972 By the Witness:

A. They are made by Checker Motors Manufacturing, many of them at least, because they also display the emblem. I don't know if they make all of them or not.

By Mr. McConnell:

Q. And all of the Parmelee cabs were made by Checker Motors Corporation, were they not?

A. Our fleet of 1952 was built by Checker Motors Corporation.

Q. And those were the ones still in operation in 1955?

A. Yes, sir.

Q. You said something about the baggage compartment being separate so as to not expose the passengers to the weather. When you got the baggage compartment full, this little trunk back there, what did you do with the rest of it?

By Mr. McConnell: I object to his stating "this little trunk back there," as his testimony, and then the witness has to assume that is true.

By the Court: That may be stricken from the question.

By Mr. Thompson:

1973 Q. When you got the trunk full, where did you put the rest of the baggage?

A. Well, when the trunk was full there was no more room for baggage.

Q. Where did you put it?

A. There was no place to put it. There was no need for any space.

Q. If the passengers had more baggage than would go into the trunk, what did you do with it?

A. We didn't have more passengers than we could accommodate their baggage.

Q. In other words, when you got the trunk full of baggage, then you accommodated only the passengers whose baggage had gone in the trunk?

A. If one passenger had a trunk full of baggage, we would handle that one passenger on his vehicle.

Q. So then that made it a one-passenger limousine?

A. What kind of a limousine?

By Mr. McConnell: I object to that argument with the witness.

By the Court: Yes.

By Mr. McConnell: It didn't change the cab any. It is pretty obvious.

By Mr. Thompson: All right.

1974 By Mr. Thompson:

Q. The truth of the matter is, you piled it in the front seat beside the driver, didn't you?

A. A piece or two might go in with the driver if there was no passenger there.

Q. Or you let the passengers carry it in their laps?

A. No, there wouldn't be room for that.

By the Court: All right; this is a nice time for you folks to have lunch. Come back at 2:15. Have a nice lunch.

(Thereupon a recess was taken in the hearing of the above-entitled cause to 2:15 o'clock p.m. of the same day, Monday, May 9, 1960.)

1975 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Monday, May 9, 1960,
2:15 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

1976 Present: (Continued)
Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1977 By the Clerk: Case on trial.

By the Court: Let me talk to counsel a minute before the jury comes out. I am sorry I was late, but I was with Judge Hastings, as I told you.

We have the Judicial Conference Wednesday and Thursday, all day each day. I don't want to rush this case, but I would like to finish it by tomorrow, if we can. If we can't, we will go on Friday with it. If you want to work a little later tomorrow evening I can work with you later, if necessary, or tonight. I leave it entirely up to you.

By Mr. Thompson: We are trying to finish today, if we can.

By the Court: I don't want to rush anybody.

By Mr. Thompson: I think it is high time we were doing a little rushing.

By Mr. McConnell: You have been taking all the time. You have taken —

By the Court: I don't think so. I don't think we have wasted any time here. We have done the best we could under the circumstances.

I am merely leaving the cards face up so you will
1978 know what is going on from our Judicial Conference point of view. That I couldn't help. So let's try, if

we can to wind up by tomorrow, and if necessary, argue a little later.

By Mr. Thompson: How much more have you got, Mr. McConnell?

By the Court: Let's see what is going to happen.

By Mr. McConnell: I haven't anything more except this witness.

By Mr. Thompson: We will get through today maybe.

By the Court: How long will it take on the instructions? Do each of you have yours?

By Mr. Thompson: It won't take long.

By the Court: When you get through, we will go into chambers and discuss the instructions.

By Mr. Thompson: As soon as we get through.

By the Court: Let's talk about arguments. How long will each side take?

By Mr. McConnell: Well, your Honor said we weren't going to have any limitations, and I don't argue too long, but I wouldn't want to get under a wire here to get through.

By the Court: Certainly I don't want to limit it if I can help it. What is the approximation?

By Mr. McConnell: Let's hear from Judge Thompson.

By Mr. Thompson: Oh, I haven't any idea that 1979 it will take over an hour.

By the Court: Each side?

By Mr. Thompson: I can't speak for them; only my side. I don't see how the issues —

By the Court: Suppose we limit it to two hours each side.

By Mr. Thompson: Oh, I don't see any point in a limitation of two hours on each side. That means we are going to take two hours, and if we haven't got sense enough to limit our arguments without wearing the jury

out, we ought to quit practicing law.

1980 By the Court: Do you want less?

By Mr. McConnell: I don't want to be limited to less. I think it will take me two hours, all of two hours.

By Mr. Thompson: Opening and closing?

By Mr. McConnell: I think it will take me two hours to open this case.

By the Court: Two hours each side then.

Are you going to apportion your time among the defendants?

By Mr. Meserow: Your Honor, in the interest of saving time, we are going to let Judge Thompson be the sole one to argue for all the defendants.

By the Court: All right. Two hours.

By Mr. Keating: There may be some modification of that. I may want to make an argument.

By the Court: All right.

Bring out the jury.

(Whereupon the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: Proceed.

1981 WILLIAM A. SCHEEDER, called as a witness herein on behalf of the Plaintiff, in rebuttal, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Resumed)

By Mr. Thompson: I will ask that these documents be marked Defendants' Exhibits 63 and 47-B for identification, respectively.

(Whereupon said documents were marked, respectively, as Defendants Exhibits Nos. 63 and 47-B for identification.)

By Mr. McConnell: I have some objections here to the offer made this forenoon.

Defendants' Exhibit 47, which was offered together with the document, Defendants' Exhibit 47-A, on that, this penciled memorandum, which was Exhibit 47-A, Judge Thompson said:

"I show you a document marked Defendants' Exhibit 47 for identification, which is a handwritten document, and ask you if you received that."

The witness said:

1982 "I received Mr. Kimbel's letter of March 12. I didn't receive this penciled memorandum."

So there is no foundation for that at all. He doesn't know anything about it.

Now on these others, they are all letters which are, at least, hearsay; sometimes it is double hearsay; sometimes it is triple hearsay, about somebody heard somebody say something, and it was repeated to him, and then he repeats it to somebody else, and then he bundles it up and writes a letter to Mr. Scheeder.

We object to them all as hearsay.

By the Court: What about the first one, Judge Thompson?

By Mr. Thompson: Well, the first one, I inquired whether he received Exhibit 47, which is the penciled one, and he said, "I received the letter from Mr. Kimbel," and the letter from Mr. Kimbel, which I then had marked Exhibit 47-A, is a typewritten copy of Exhibit 47. He did receive it, and I will ask him one more question, if I may, about another.

By Mr. Thompson:

Q. I show you Defendants' Exhibit 47-B, Mr.
1983 Scheeder, and ask if that is the letter you wrote in reply to the content of Exhibit 47 and Exhibit 47-A.

By Mr. McConnell: Now that isn't a fair question of that witness because the content of Exhibit 47 is contained in 47-A. He has testified to that. He compared it there on the witness stand.

By the Court: He may answer.

By the Witness:

A. This is my letter to Mr. Kimbel.

By Mr. Thompson:

Q. In response to his letter?

A. His letter.

Q. Of March 12, 1951?

A. Right.

By the Court: They all may be received in evidence.

(Said documents, so offered and received in evidence, were marked, respectively, as Defendants' Exhibits Nos. 43, 45, 47, 47-A, 48, 49, 50, 52, 53, 54, 55, 57 and 59.)

1984 By Mr. Thompson: By the way, your Honor, No. 43 which I offered in evidence appears to be a carbon copy of No. 47-A, so we withdraw No. 43.

By the Court: All right.

By Mr. Thompson:

Q. Mr. Scheeder, you were describing this seven-passenger limousine. I show you a photograph marked Defendants' Exhibit No. 63, and ask you if that is a photograph of the vehicle used by Parmelee in 1952, 1953, 1954, and 1955?

A. This is a picture of one of our vehicles, yes.

Q. And that is what you were calling the seven-passenger limousine?

A. Yes, sir.

Q. You said you had sixty-five of these?

By Mr. McConnell: May I see it?

By Mr. Thompson: I am sorry; yes.

By Mr. Thompson:

Q. How much did each of them cost.

A. I don't recall the exact figures.

Q. Without being exact, $2,500 apiece?

A. I don't recall the figures.

Q. Two thousand?

1985 A. I am at a loss. I am sorry, but I don't know the costs of them. I don't remember the costs of them. I may have heard it, but I can't quote. I really don't know.

Q. You were vice president, weren't you?

A. Yes.

Q. Did you pass on the purchase price of these vehicles?

A. I don't believe I did.

Q. Who did pass on the purchase price?

A. That would come under our general manager.

Q. Who is that? You are speaking of what year, now?

A. Well—

Q. 1952, you said you bought these?

A. Well, 1952 Mr. Passolt.

Q. He was also a vice president?

A. Yes, sir.

Q. He was a different kind of vice president than you are?

A. Yes, sir.

Q. What was he vice president in charge of?

A. Vice president and treasurer.

Q. And you were vice president and secretary?

1986 A. Vice president in traffic.

Q. You were vice president and secretary?

A. Yes, sir.

Q. And he was vice president and treasurer?

A. Yes, sir.

Q. Mr. Markin, or at least his company up there in Michigan fixed the selling price, didn't they?

A. I don't know.

Q. You said you had twenty ten-passenger limousines, I think you called them. How did you seat your passengers in that vehicle?

A. They seated three across, three rows of seats.

Q. That is nine?

A. And one with the driver.

Q. The driver is ten?

A. That is right.

Q. Where did you put the baggage?

A. The baggage went in the rear in a specially constructed trunk which was recessed, and the gas tank was even smaller to make more baggage space.

1987 Q. If you got more baggage with a load of passengers than you could get in the baggage space, what did you do with it?

A. The baggage space was ample to take care of the hand baggage.

Q. There never was a time when the eleven passenger would have too much baggage?

A. I don't recall.

Q. In fact, you didn't see any of that at all, did you?

A. I didn't.

Q. You were never over at the station seeing them unloading this baggage, were you?

A. I was around at times.

Q. How many times?

A. Well, there were occasions when I would spend part of two or three days of time around the stations.

Q. How many years apart were these occasions?

A. Well, continuously.

Q. Were you around there on October 1st when the change-over took place from Parmelee to Railroad Transfer?

A. I was at the La Salle Street Station that morning.

Q. You were at the La Salle Street Station?

1988 A. Yes.

Q. And who assigned you there?

A. Beg pardon?

Q. Who assigned you to be at the La Salle Street Station?

A. Well, that was an arrangement that was made the day before. We had, I think it was through Mr. Rheintgen that day I was designated to cover that station.

Q. Mr. Rheintgen?

A. Yes, sir.

Q. He was another vice-president, wasn't he?

A. After Mr. Passolt.

Q. So you had a lot of vice-presidents here in Chicago. How many did you have?

A. Two vice-presidents. Mr. Passolt died, and Mr. Rheintgen succeeded him.

Q. Just two at a time?

A. That is right.

Q. Where was Rheintgen assigned that morning of October 1, 1955?

A. I believe he was at the Central Station.

Q. Do you know?

A. I don't recall.

1989 Q. Mr. Freeman, attorney for Parmelee Transportation Company, did the assigning, didn't he?

A. He had part of it.

Q. He was on the job at the stations that morning, wasn't he?

A. I don't recall which station he was at.

Q. He was at a station? He took an assignment, didn't he?

A. I don't believe he did.

Q. In fact, he was riding herd on all of them at the different stations, wasn't he?

By Mr. McConnell: I object to that characterization.

By the Court: Yes, the description may be stricken.

By Mr. Thompson:

Q. He was supervising the conduct that was going on at these different stations, wasn't he?

A. He didn't come to the La Salle Street Station.

Q. Did you see him at any station?

A. I was stationed at La Salle Street.

Q. Did he call on you there?

A. He did not.

Q. What instructions did he give you?

1990 A. To observe what was going on.

Q. Is that all?

A. That is all I can remember.

1991 Q. Did you have any Parmelee cabs there?

A. Out in the street.

Q. On what Street?

A. LaSalle Street.

Q. That is at the east side of the station?

A. Yes, sir.

Q. That is where the entrance is, where vehicles enter and depart from the loading section back in behind, isn't it?

A. Yes, sir.

Q. How many Parmelee vehicles did you have parked there on LaSalle Street at the entrance?

A. About four or five.

Q. Did you have any persons inside of the station inviting customers to come out and patronize the cabs?

A. There were agents inside, but they didn't interfere with the transfer of traffic.

Q. You were there?

A. I was there.

Q. What did you do?

A. I observed.

Q. Observed what?

A. The conditions.

1992 Q. What conditions?

A. The transfer conditions.

Q. How many other people did you have there from the Parmelee group?

A. I believe there were two of our agents in there at the time.

Q. Well, Mr. Freeman was over at the Dearborn Street station, wasn't he, with Mr. Rheintgen?

A. I don't know.

Q. When the early trains were coming in from 7:00 to 8:00 o'clock?

A. I don't know where Mr. Freeman was.

Q. There were a half dozen trains coming in at the Dearborn station between 7:00 and 8:00, weren't there?

By Mr. McConnell: I object to this as improper cross examination. If he wants to make him his own witness, he may answer.

By the Witness:

A. I don't know how many trains were arriving in the morning.

By Mr. Thompson:

Q. Let's get to something else. You say Parmelee Transportation Company, the plaintiff here, bought this Des Plaines Street building in 1954?

1993 A. Yes, sir.

Q. Who sold it?

A. The Yellow Cab Company.

Q. That is what I thought.

By Mr. McConnell: I move to strike out what you think as having no bearing on this lawsuit.

By the Court: It may be stricken.

By Mr. Thompson:

Q. By the way, Mr. Scheeder, there was never a time in the history of Parmelee Transportation Company that it had $500,000 invested in vehicles for this interstation transfer service, was there?

By Mr. McConnell: I object to that. It doesn't make any difference.

By the Court: I will sustain the objection.

By Mr. Thompson:

Q. You say that—

By Mr. Freeman: Did he answer?

By Mr. Thompson: He sustained the objection.

By Mr. Thompson:

Q. Do you say this escalator clause which had
1994 to do with the increasing of the price of the coupon for each decrease, each one-percent decrease in the volume of passengers transferred was in the contract, was in the Parmelee proposal when it was presented on March 15, 1955, and didn't you say it was removed on March 17 at your conference?

1995 A. At the May 19 meeting Mr. Markin at the outset of the meeting stated he was willing to eliminate that escalator clause.

Q. That was the May 19 meeting?

A. Yes.

By Mr. McConnell: That is what he said.

By Mr. Thompson: March 17 is what you had him say.

By Mr. McConnell: No, I didn't. I said May 19, and the transcript will bear me out.

By the Court: Let's not argue. The jury heard it.

By Mr. Thompson: If the jury has as much trouble in remembering these things, we will be in real difficulty.

By Mr. McConnell: You speak for yourself. I remember what I asked him. I asked him May 19.

By Mr. Thompson: All right.

By the Court: Put the next question.

By Mr. Thompson:

Q. You took a little recess at the May 19 meeting to go out and decide to remove it after the railroads demanded that it be removed?

1996 A. Yes.

By Mr. Thompson: We offer in evidence the photograph, Defendants' Exhibit No. 63.

By Mr. McConnell: I have no objection to the photograph.

By the Court: It may be received.

(Said photograph, so offered and received in evidence, was marked Defendants' Exhibit No. 63.)

By Mr. Thompson:

Q. Now Mr. Scheeder, when did the responsibility of the interstation transfer company for the transferring of passengers commence, at train arrival time, I mean?

A. About 5:30 a.m. daily.

Q. Well, I am sure my question was not clear to you. A train arrives, let us say, at 7:30. The vehicles of the transfer company are out in front.

As to the length of time the passenger has to wait for the vehicle, when would you start calculating that time, from the time the train arrived or from some later time?

A. The rule was to have sufficient limousines on hand before the arrival of the train so there would be no delay as the passengers came out.

1997 Q. Well, that is the point I am trying to make. The first time Parmelee Transportation Company had any responsibility for receiving a passenger was when the passenger arrived at the loading zone with his baggage and ready to get in the vehicle?

A. The question isn't clear to me. I am sorry.

Q. Parmelee had no responsibility of going back to the train and getting the passenger and his baggage, did they?

A. But we had agents located in the station.

Q. After the passengers—

A. At the train gate.

Q. Yes, but your passenger agent or whatever you called him didn't go back and get the passenger or carry the passenger's baggage, either one?

A. No.

Q. Your responsibility started when the passenger was out in the loading zone, and only if you didn't have any cab there, would you be responsible for any delay.

A. Yes.

Q. That is, if the cab was there and the passenger got out there and got in the cab, there would be no delay at all, of course, except just the time it took him to 1998 get in the cab, that is right, isn't it?

A. Yes.

Q. The fact that the train had been in twenty minutes wouldn't make any difference. Parmelee wasn't responsible for that. The same thing is true with Railroad Transfer Service, isn't it? It is the responsibility—

By Mr. McConnell: I object to this as argumentative. It is just an argument.

By Mr. Thompson:

Q. Its responsibility takes place when the passenger is in the loading zone ready to get in the cab, isn't it?

By the Court: Is that proper rebuttal, Judge? On what theory?

By Mr. Thompson: It is rebutting this testimony of Krock, as to all this half hour delay.

By the Court: He may answer.

By Mr. McConnell: This is supposed to be cross exam-

ination within the scope of the direct. I didn't ask him a thing about Krock or about the delays.

By Mr. Thompson: You were asking him about 1999 how fast Parmelee got them away.

By the Court: He may answer.

By Mr. Thompson: I am trying to get a time, a test time here, in that period.

By the Court: He may answer.

By Mr. Thompson:

Q. The responsibility of the transfer service didn't begin until the passenger was there with his baggage ready to get in?

By Mr. McConnell: Your Honor, that is a legal question, what the responsibility of the cab company is. This witness is no lawyer. I don't think the judge could answer that question. I don't think he knows when the responsibility starts or ends.

By Mr. Thompson: You wouldn't want to try me, would you?

By Mr. McConnell: No, I wouldn't.

By the Court: When did the duties begin?

By Mr. Thompson:

Q. When did the duty start?

A. Our duty started from the time that the agent first contacted the passenger upon his arrival in
2000 the station, and he would take care of any baggage that he may be carrying that he wanted transferred over to the parcel room, and he may answer any questions he has in connection with his arrival in Chicago, and he would direct him to where the Parmelee limousines were loading.

Q. Yes. That was part of his duties, but not part of the duties as to moving the passenger from one station to the other. That started when the passenger arrived at the loading zone with his baggage, didn't it?

A. Yes, it did.

By Mr. McConnell: I object to that. That is just an argument with the Judge here. He states what it all is, and then asks a question back of it.

By the Court: He may answer.

By Mr. Thompson: I think that is all.

2001 *Redirect Examination.*

By Mr. McConnell: Where is that big picture of yours?

By Mr. Thompson: This one? I have a lot of other pictures here.

By Mr. McConnell: You must have taken this one on a dark night sometime.

By Mr. McConnell:

Q. I show you this Defendants' Exhibit 63. Where was the baggage carried in that taxi cab, as Judge Thompson calls it?

A. This is a very poor angle shot of that limousine.

Q. Let me ask you that question.

Does it give you a fair reproduction of the proportions of the vehicle?

A. No.

Q. All right. Go on from there now.

Where is the baggage?

A. The baggage goes in the rear. This lid lifts up. There is a recessed compartment. This baggage compartment is recessed. It is built lower purposely to accommodate more baggage with a smaller gas tank and no obstructions in the interior.

Q. All right.

2002 Now were these, whatever you want to call them, he calls them taxi cabs, taxi cab, limousine, vehicle, or carrier, whatever it is, were they made from specifications furnished by the Parmelee company to this factory up in Kalamazoo?

A. I don't know whether we sent in specifications or not, other than the baggage compartment. We were greatly interested in that.

Q. What did you ask be built in your cabs for baggage?

A. Specifying the average number of pieces of baggage that we would carry on a full load of passengers.

Q. How many bags could you get in a carrier or vehicle like that?

A. Oh, on an average you could carry twelve ordinary run of hand baggage.

Q. Was it a larger trunk than an ordinary trunk in a passenger car?

A. Yes.

Q. You say it was specially built. How was it specially built?

A. Well, the baggage compartment itself was specially built because it was recessed and gave more room, and the vehicle itself or limousine itself with its jump seats would accommodate six people in the rear and 2003 one with the driver.

Q. All right. Now wait a minute before we get through with the trunk.

Was there some change in the gasoline tank to accommodate more luggage?

A. Yes, sir, I said that.

Q. Well, did you find it satisfactory?

A. It was.

Q. To carry the baggage of the ordinary passenger load?

A. It was.

Q. Did you ever have any complaints from the railroads that you didn't have enough baggage space in your vehicles?

A. I don't remember of any such complaints.

Q. Now getting to the jump seats in the vehicles, were they the little round jump seat in the Yellow cab or were they something different from that?

A. No, they were a square seat, padded, and they were broader than the round seats.

Q. How much space, when they were both down in front, how much space would there be between, if you put in a third passenger?

A. They abutted each other.

Q. So there wasn't any space?

2004 A. No space.

Q. They both came down and made a solid surface?

A. So it would be a continuous seat.

Q. So you could put three people in that, is that right?

A. Yes, three people could be seated very comfortably.

Q. And if you wanted to carry a seventh passenger, where did he sit?

A. A seventh passenger?

Q. Yes, a seventh passenger.

A. He would sit with the driver.

Q. Now you didn't carry luggage up to top of the carrier, did you?

A. No, sir.

Q. Did Keeshin carry luggage up there, exposed to the elements?

A. I have seen baggage carried on the tops of his cars.

Q. You stated here in answer to cross examination that you had some negotiations with all the railroads on a contract or agreement. Did you ever see a contract between Parmelee and these 21 railroads?

A. None.

Q. They never had one, did they?

2005 A. No, sir, with the exception of the Nickel Plate.

Q. That was one contract with the Nickel Plate?

A. Yes, sir.

Q. When was that?

A. That contract was made in 1941, and was amended or changed as there was a rate change.

Q. All right. Now did you understand that these railroads could stop this service so ar as Parmelee is concerned any time they wanted to?

A. Yes.

Q. And they did, didn't they?

A. Yes.

Q. And Mr. Keeshin's outfit came in and took over, isn't that right?

A. Yes.

Q. You had no contract that would prevent that, did you?

A. No.

Q. Do you recall a statement being made at any of those meetings with the group of railroads—first let me ask you this: At those meetings with the group of railroads, what were you negotiating about?

A. Our transfer coupon rate.

Q. How much you were going to get for each

2006 coupon, is that right?

A. Yes.

Q. Do you recall a statement being made at any of those meetings that if any railroad wanted a contract with you, they should do so individually?

A. There was a meeting to that effect some years ago, and it was decided in the event any individual railroad wanted a contract with Parmelee, they could proceed

accordingly, but there was never any such contract made.

2007 Q. Do you recall how many vehicles you had of the type that you see here in this bobtail photograph, where you only see half?

A. Yes, sir.

Q. How many of those did you have?

A. Sixty-five.

Q. Do you recall how many other vehicles you had?

A. We had twenty of the eleven-passenger type. We had fifty-one baggage trucks and four service vehicles.

Q. Is that the lot?

A. Yes.

By Mr. McConnell: Where are those documents that you offered, that complaint file?

By Mr. McConnell:

Q. If I can count correctly, there are nine of these letters here which purport to be complaints. Will you look at those and tell us whether you talked to anybody who had the complaint?

By Mr. McConnell: While he is struggling with that, I will have some exhibits marked.

(Thereupon the said documents were marked Plaintiff's Exhibits 127 through 136, for identification.)

By the Witness:

2008 A. The only one I can recall talking to anybody about any of these letters was Mr. Buford, superintendent of the New York Central, July 5, 1954, where he questions the two-a-day baggage transfer, and when this letter was received—

By Mr. McConnell:

Q. No, I just want to know which ones you had a talk with, and you have answered my question.

That was Mr. Buford, is that right?

A. That is right, Buford.

Q. All right. Now this refers to the two-a-day service which you testified about when Judge Thompson examined you. Do you recall that? There was one in the morning and one in the afternoon?

A. Yes, sir.

Q. Did you augment that service in any way?

A. That service was augmented with numerous other trips as the traffic conditions warranted. During the busy times, there may be five or six or ten truckloads go from a certain station to other stations.

Q. In other words, regardless of what you said about two-a-day transfer, you sent vehicles wherever they were needed, is that right?

A. Yes, sir.

2009 Q. And whenever they were needed?

A. Yes, sir.

Q. And that was done through your dispatch system which you told us about this morning?

A. No, that come under a different department.

Q. Well, you tell us how it came in.

A. Our superintendent, Mr. Krock, was watching that end of the traffic very closely and that didn't require dispatching by telephone. The men in charge of the baggage rooms would report as to the volume of baggage that they had, and if it were necessary, additional trips were made aside from the regular two a day.

Q. All right. Now you say you talked to Mr. Buford about this?

A. No.

Q. You didn't? Well, I thought you said—who did you talk to about it?

A. I talked to Mr. Bone upon receipt of that letter.

Q. All right. What happened?

A. I read the letter to him, and he said that he would handle it with Mr. Buford.

Q. That he would handle it?

A. Yes, sir.

Q. Do you know whether he did handle it with
2010 Mr. Buford?

A. I don't know.

Q. You never heard anything further from it?

A. No, sir.

Q. And that was the end of the incident?

A. Yes, sir.

Q. You did nothing about it further?

A. No, sir.

Q. And you don't know what happened about it?

A. No, sir.

Q. Well, it says it was causing some difficulty in the handling of corpses. What was the difficulty about handling corpses?

A. None that I know of.

Q. You don't know what it was?

A. The corpses, I didn't know what it was, and the corpses didn't come under that two-a-day plan.

Q. In other words, you didn't make just two trips for a corpse?

A. No.

Q. You made a trip for a corpse whenever there was a corpse, is that it?

A. That is right.

Q. Now these other complaints, of people complaining, you never saw, is that right?

2011 A. These complaints addressed to me I would know about, but these don't indicate I was involved or mentioned in any of this correspondence, and I don't remember these.

Q. Which documents are you referring to now that you don't know anything about, by identification number? They have a number on there, Mr. Scheeder.

A. Down below—

Q. The first one is Defendants' Exhibit 55?

A. Yes.

Q. What is the next one?

A. I am not included in that. Defendants' Exhibit 53. Defendants' Exhibit 54.

Q. You don't know anything about those?

A. No.

Q. That went to Mr. Klipo?

A. That is right.

Q. You don't know anything about it?

A. There is nothing on here to indicate that it came to our attention.

This is Defendants' Exhibit 49, Iowa State College to the B&O, and there is nothing on here to indicate—

Q. Not whether there is anything on there or not, but do you remember anything about it?

A. I don't recall any of these individual items.

Q. Well, in any event you never talked to any of these people, and you didn't have any chance to find out whether they were telling the truth or not, did you?

A. No, sir.

Q. What is the other group you have there?

A. This is Defendants' Exhibit 47-A, a letter to me from Mr. Kimbel of the passenger traffic department of the Illinois Central Railroad. It refers to insufficient cabs upon arrival of their train on March 9—

Q. Did you talk to Mr. Kimbel about that?

A. No.

Q. All right.

What is the rest of it?

A. This is answered by a letter to Mr. Kimbel.

Q. All right.

Can you tell us what period those complaints cover?

A. The exhibited numbers?

Q. What period of time.

A. Well, March 9, 1951.

2013 Q. Up to 1955, isn't it?

A. What was the question, please?

Q. Up to 1955? That is the period of time?

A. The period of time of these complaints?

Q. Yes.

A. 1951 to 1955.

Q. Wasn't there one earlier than that, in 1949?

A. January 22, 1949.

Q. All right. So you have eight or nine complaints there in how many years, six years?

A. Six years.

Q. I show you documents which are marked for identification as Plaintiff's Exhibits 127 through 136 and ask you if you can tell us whether or not you received these documents through the mail?

A. Yes.

Q. Plaintiff's Exhibit 127 has enclosures with it. I will ask you whether those enclosures were included with the original letter.

A. Yes.

2014 Q. And that is on the letterhead of what company?

A. The New York Central System.

Q. Which is a defendant in this lawsuit?

A. Yes.

By Mr. McConnell: I offer this document in evidence as Plaintiff's Exhibit No. 127.

By the Court: Let me give the jurors a ten-minute recess. You go over all the documents with counsel so we can save time on each document, and then when you come back we will discuss each one separately. Take a ten-minute recess.

(Thereupon a short recess was had, after which the following further proceedings were had outside the presence and hearing of the jury:)

By Mr. McConnell: Mark these as Plaintiff's Exhibits 137 through 154, 155-A and B, 156-A, B and C, and 157, 127-B, 131-B, and 136-B.

Mark these as 158-A and B, 159-A and B, and 160-A and B, all for identification.

2015 (Thereupon the said documents were marked Plaintiff's Exhibits 137 through 154, 155-A and B, 156-A and B and C, 157, 158-A and B, 159-A and B, 160-A and B, 127-B, 131-B, and 136-B, for identification.)

By the Court: Bring out the jury.

(The following proceedings were thereupon had in the presence and hearing of the jury:)

By Mr. McConnell: I believe I offered Plaintiff's Exhibits 127-A through 136, inclusive. Anyway, I reoffer these.

By Mr. Thompson: We object to these documents. No. 127-A is a letter calling attention to the fact of a radio broadcast, and the script of the radio broadcast is 127-B, which, of course, has to do with a birthday party and proves nothing in this case.

It is wholly irrelevant and immaterial, and it is certainly not rebuttal of anything.

By the Court: The objection is sustained to this exhibit.

2016 By Mr. Thompson: This document, 131-A, is an acknowledgment of a letter, 131-B, which is immaterial to any issue in this case as not rebuttal of anything that the defendants have offered in evidence.

2017 By Mr. McConnell: Before your Honor sustains an objection, I think I might say one thing. These

are letters from the railroads, people that are associated with the railroads, commending the service, and it seems to me if we are going to have the complaints we ought to have the commendations.

By the Court: Whatever comes from the railroads is not necessarily admissible unless it has a connection with the issues. This one has nothing to do with service, and this one is a celebration about something.

By Mr. McConnell: It says we did a wonderful job.

By Mr. Thompson: I didn't know the issue in this case was that they didn't render service.

By Mr. McConnell: I didn't either until you started putting in some complaints.

By Mr. Thompson: I thought the issue in this case was whether or not the public was being served.

By the Court: Objection sustained to that exhibit.

2018 By Mr. Thompson: We object to 136-A, which is an acknowledgement of a letter, 136-B, which has nothing to do with the subject matter at issue, which rebuts nothing.

By the Court: Objection sustained to 136-A and 136-B.

By Mr. Thompson: Objection to No. 128, which is irrelevant. It is another birthday letter, and it doesn't rebut anything.

By the Court: Objection sustained.

By Mr. Thompson: Same objection to No. 129, the same sort of a document.

By the Court: Objection sustained to No. 129.

By Mr. Thompson: Same objection to No. 130, the same sort of a document.

By Mr. Freeman: Do you say No. 130 is a congratulatory letter, Mr. Thompson, the same sort of document?

By the Court: Same ruling. Sustained as to No. 130.

By Mr. Thompson: No. 132. Well, that is a different

document. We object to it as irrelevant to any issue
2019 in this case and as hearsay as to all these defendants and not rebuttal to anything.

By the Court: Objection overruled to No. 132.

By Mr. Thompson: It is hearsay, all of it.

By the Court: It is on the Chicago and North Western Railroad system. I will let it go in.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 132.)

By Mr. Thompson: Maybe I didn't look at it. Well, certainly it is hearsay as to everybody else, except the North Western.

By Mr. McConnell: You didn't offer anything that wasn't hearsay.

2020 By Mr. Thompson: We object to Plaintiff's Exhibit 133 as being irrelevant to any issue and as not rebuttal of anything defendants offered.

By the Court: Objection overruled to Exhibit 133. It will go only to the Illinois Central.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 133.)

By Mr. Thompson: I might add that on their case in chief, they offered one congratulatory letter. If that was their case in chief, then it was their obligation to offer all of that sort of stuff, and we object to this as not proper rebuttal. The same thing is true of Plaintiff's Exhibit 134 for identification.

By Mr. McConnell: I object to characterizing our evidence as "all that sort of stuff," and I move to strike it out.

By the Court: Yes. It may be stricken.

The only comment I can make on it is that in
2021 the light of the complaints, this may have some relevancy, and I leave it up to the jury.

The Atlantic Coastline Railroad Company, are they a defendant here?

By Mr. Thompson: No, not in any way related to any part of this.

By the Court: Objection sustained to Plaintiff's Exhibit 134 for identification.

By Mr. Thompson: Plaintiff's Exhibit 135 for identification is a letter from the Chicago North Western Railway to Parmelee Transportation Company. We object to that as not rebuttal of any subject and as hearsay as to all defendants except the North Western.

By the Court: I will let Exhibit 135 go in, limited and only binding as to North Western.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 135.)

By the Court: Do you want to take these, Mr. McConnell? These are admitted, and these are rejected.

By Mr. McConnell:

Q. I show you documents which are marked for identification Plaintiff's Exhibits 137 through 160-B, both inclusive, and ask you to tell us, if you can, whether or not they were received by your company, the Parmelee Company, through the regular course of mail.

By Mr. Thompson: If the witness looked at them during recess, we have no objection to his answering without taking time to go through them all again.

By Mr. McConnell: I don't think he did look at them. If he did, I certainly have no objection to saving the time.

By Mr. McConnell:

Q. Did you have a chance to look at those?

A. Not this noon, sir.

By the Court: How long will it take? Ten minutes?

By Mr. McConnell: I don't think it will take more than a couple of minutes. It shouldn't.

2023 By the Court: Judge Thompson wants to see them.

By Mr. McConnell: Oh, it will take him quite a while, I am sure. He hasn't seen them.

By the Court: Ten more minutes.

(Thereupon the following proceedings were had outside the presence and hearing of the jury:)

By the Court: Are these additional congratulatory notes?

By Mr. McConnell: Yes, but a different category. This is a category from the public, people that have used the service.

By Mr. Meserow: If your Honor please, we are trying to hasten the termination of this trial. Now we have hundreds of complimentary letters in our files which we can bring here, and which will be proper in evidence if your Honor permits these to go in at this time.

We haven't brought them in, intentionally, in order not to delay this matter.

2024 By Mr. Keating: Might I say something on the assumption that these are going to be offered? Initially, your Honor, you recall they offered one letter praising them during their direct case —

By Mr. Freeman: Which was that?

By Mr. Keating: I don't remember.

By Mr. Freeman: I don't remember any letter praising us.

By Mr. Keating: To create the inference of perfect service. Now we have put in evidence of complaints. Now on rebuttal here, the plaintiff is bringing in letters of praise.

He can bring in 10,000 letters. That is not going to prove perfect service. It is like a boy accused of playing truancy from school. He plays hookey one day, and you show that, and he can't rebut that by showing he went to school all these other days. This is going to go on forever with all these exhibits.

By the Court: Unless they are letters from railroad companies, not from the general public, I intend to sustain the objection.

2025 By Mr. McConnell: Can I be heard on it before you sustain it, please?

By the Court: Sure. I said I intend. I didn't say I am doing it.

By Mr. McConnell: Judge Thompson has got, I think, eight or nine letters here, or quotes from letters from the public, which are obviously what somebody in the public said to somebody else which is repeated to this man.

Now we are offering, we have got — I don't know how many, but many more than what we are offering here, letters from people who have used our services, members of the public, and who are satisfied with it, and they write us and tell us so.

As your Honor said the other day, what is sauce for the goose is sauce for the gander. If he can use his statements of complaints, certainly we ought to be allowed to use commendatory letters from the public showing that during that same period of time, the service was satisfactory.

I have tried to lessen the burden by just picking 2026 out a few samples of what we have, and I think that the issue is brought in here by Judge Thompson as to whether or not the service is satisfactory. The first time it was raised was on this cross examination. I never had a chance to meet an issue like that before because it wasn't raised, but he certainly raised it when he put in

this evidence on cross examination of my witness of these complaints.

Now, how can I rebut that except by showing that the public did write in?

By the Court: Except those complaints, as I ruled upon them, or thought I did, were addressed to the Parmelee by the railroad companies, not by individuals.

By Mr. McConnell: No, they were complaints retailed by the railroads from people.

By the Court: That is right. This came from the railroad company, the contracting party, calling their attention to some complaints. But if we are going to open the door here to complaints and compliments, I would rule for each company, both of them, that they have no
2027 relevancy here, not to the issues of the case.

I admitted one of your compliments back to 1948. Certainly it has no relevancy, but I thought maybe coming from a railroad company, it might have some connection with the charge.

I also want to say this, in my judgment, the witness testified to the excellent service of Parmelee, and for that reason complaints could be admissible. But complimentary letters would not be proper at this time because they have no bearing on complaints. If he says that the service was excellent, did you read these letters, that is all.

By Mr. McConnell: I know, but we are dealing with the public all the time. This is a sample.

By the Court: He testified that the service was excellent, that it was good, that they have been on the job all the time. The jury knows that. Now what 2,000 letters from the public would mean, it would take up indefinitely—

By Mr. McConnell: There aren't 2,000 letters. There are only ten.

2028 By the Court: Even fifteen or twenty letters, it hasn't any bearing on the case, and I am going

to sustain the objection.

2029 By Mr. Thompson: I would like to make the observation—

By Mr. McConnell: Did I offer them?

By the Court: Oh, sure. Of course you—

By Mr. McConnell: I identified them and then they jumped in here.

By the Court: No, I didn't say you did. I said you can.

By Mr. McConnell: I want to offer them.

By Mr. Thompson: I just wanted to make the observation, Mr. McConnell, that you had a witness on the stand who testified that rarely ever did they have any criticism of the service, and all I was doing was cross-examining the witness on that issue, and calling his attention to certain documents.

By the Court: That is precisely what I said. It was proper cross examination.

By Mr. Thompson: Exactly, and that is quite different.

By the Court: But compliments are not within the category because the witness testified as to the ex-

2030 cellent service. The mere fact that a layman says bravo doesn't add to it.

By Mr. McConnell: Here is one from a railroad. I will offer this separately.

By the Court: A letter from the railroad, I have already ruled.

By Mr. McConnell: I offer this as Plaintiff's Exhibit 145.

By Mr. Thompson: We object to this as just the usual amenities of an occasion, in which you say it was nice knowing you, and as rebutting nothing and proving nothing.

By Mr. McConnell: Well, it is a railroad that says we are doing all right, as I read it.

By Mr. Thompson: When they got all through telling them they canceled out their arrangements, they said, "Here is your hat; come again." That is about all it amounts to.

By Mr. McConnell: Well, I guess you are not going to rule on that, Judge Thompson.

2031 By the Court: I will let this one go in, dated August 10, 1955, Plaintiff's Exhibit No. 145, in line with the other three or four that I have admitted.

By Mr. Thompson: That is confined to what railroad, please?

By the Court: Limited to the New York Central Railroad Company and Chicago, Rock Island and Pacific Railroad Company.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 145.)

By Mr. Thompson: The latter of which is not a defendant.

By Mr. McConnell: It is one of the twenty-one railroads.

By Mr. Thompson: You don't challenge my statement that it is not a defendant?

By Mr. McConnell: No, I don't have to.

By the Court: All right.

By Mr. McConnell: So the record is complete, I am offering Plaintiff's Exhibits 137 through 160-B, excepting from that group Exhibit 152 and Exhibit 145. I

2032 guess your Honor has ruled on that already. That is this group from the public.

By the Court: Yes, I am sustaining the objection to those.

Bring out the jury.

By Mr. Thompson: Mr. McConnell, I haven't looked at these. Are they just individual letters?

By Mr. McConnell: They are individual commendations of our service from the public.

By the Court: It is upon that representation that I am ruling.

By Mr. Thompson: All right.

Now, your Honor, you have reserved your ruling to Defendants' Exhibit 30, which is that complaint in the Superior Court. We are offering it, among other things, to show what plaintiff here, Parmelee Transportation Company, alleges with respect to its contract with the railroad and how they were made, and so on and so forth, all of which is set forth—

By the Court: Admissions against interest.

2033 By Mr. Thompson: Oh, yes.

By Mr. McConnell: May I see it?

By the Court: Yes, sure. We will take a few minutes recess.

(Thereupon a short recess was had, after which the following further proceedings were had in the presence and hearing of the jury:)

2034 By the Court: All right, Mr. McConnell.

By Mr. McConnell: I have no objection to the foundation for this and the certification for it. I see no relevance to it.

By the Court: It may be received in evidence, as Defendants' Exhibit No. 30.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit No. 30.)

By Mr. McConnell: I have no further questions of this witness.

By Mr. Thompson: I have only one question or two for clarification.

Recross Examination by Mr. Thompson.

Q. Mr. Scheeder, when I handed you these documents during the cross examination and asked you if you received them, in each instance your recollection was refreshed by looking at a letter which you had written in connection with it, was it not?

To refersh your recollection again, as to Defendants' Exhibit No. 53, you were able to say "Yes", that you received that document, because a letter was there
2035 signed by you, or I mean addressed to you calling your attention to it?

A. This letter was addressed to me.

Q. And it relates to this document which is marked as Defendants' Exhibit No. 53, doesn't it?

A. This letter talks about Document 53, but it doesn't say it was sent to me.

Q. Well, it is addressed to you?

A. This letter is addressed to me, but this letter is not. It refers to something about the Rock County Public School, Rock Creek County Public School.

Q. That is right, being transmitted to you by the passenger traffic manager of the North Western, isn't it?

A. This doesn't show that anything was transmitted with this letter, and it doesn't show from what railroad. It is not signed.

Q. This letter from Mr. Mayer, connected with the Rock County school, as it indicates, has this complaint about the—

By Mr. McConnell: I object to reading the contents of that letter, whatever it is. It isn't in evidence.

By the Court: It is in evidence.

2036 By Mr. Meserow: It is in evidence.

By Mr. Thompson: Certainly, it is in evidence.

By Mr. Thompson:

Q. (Continuing) —of the No. 25, and you said you received it before I offered it in evidence.

A. This letter is addressed to Scheeder, but there is nothing in this letter indicating that there was anything transmitted to me as far as correspondence is concerned.

Q. It is the same subject matter on the same subject?

A. It refers to the Rock County Public School tour, and this mentions Rock County Public School tour, but I don't see this letter.

By Mr. Thompson: All right. In order to be sure, we will have it all marked, and mark this one as Defendants' Exhibit 53-A, for identification.

(Thereupon said document was marked as Defendants' Exhibit No. 53-A for identification.)

By Mr. McConnell: Objection to your description.

By Mr. Thompson: I will ask him about it.

2037 By the Court: Yes.

By Mr. Thompson:

Q. Exhibit 53-A relates to the same subject matter as Exhibit 53, doesn't it?

A. Yes.

Q. And 53-A is addressed to you?

A. Yes.

Q. All right.

Now then, as to No. 54, Defendants' Exhibit 54, which I previously said you had received, that is a complaint from Mr. Harrington, and you wrote to Mr. Harrington acknowledging it and explaining it, didn't you, trying to?

A. We wrote to Mr. Harrington whose letter was transmitted to us by the Union Pacific.

2038 Q. So your testimony was right before that you did receive that?

A. Yes.

Q. All right.

A. Just a moment. Yes, we did.

By Mr. Thompson: That is all.

By Mr. McConnell: You may step down, Mr. Scheeder. You are all through, finis.

(Witness excused.)

By Mr. Thompson: I want to read from this document on this subject.

By the Court: Let's first find out if they have any more witnesses.

By Mr. McConnell: I have no more witnesses, your Honor.

By the Court: The Plaintiff rests?

By Mr. McConnell: Yes.

By Mr. Thompson: This is part of the cross examination of Mr. Scheeder.

By the Court: All right.

By Mr. Thompson: I mean, this document refers to the examination of Mr. Scheeder with respect to whether or not there was a contract between the Parmelee Transportation Company and the railroads.

2039 By Mr. McConnell: I object to it as impeaching this witness. He didn't sign this document.

By the Court: What is the document first, for the record?

By Mr. Thompson: The document is the complaint filed by this plaintiff, Parmelee Transportation Company, in the Superior Court of Cook County, in which it recites what the contract and deal is.

By the Court: Objection overruled.

By Mr. McConnell: That doesn't impeach the witness.

By Mr. Thompson: I am not trying to impeach the witness.

By the Court: Objection overruled. I received it in evidence, and it may be read.

By Mr. Thompson: Anyway, Paragraph 6 of this complaint, which is filed by Parmelee Transportation Company, on the first of December, 1955, and signed by Lee A. Freeman as its attorney, reads:

"During the period from January 1, 1955, to on or about September 30, 1955, the Chicago Terminal Railroads in order to provide reasonable facilities for the through routing of passengers and baggage in Chicago as re-
2040 quired by Section 14 of the Interstate Commerce Act, continuously enaged plaintiff to transfer passengers and accompanying baggage between railroad terminal stations or from railroad terminal stations to passenger designated downtown Chicago destinations, and to transfer checked through baggage and trunks between railroad terminal stations. These transfer services were rendered under agreements entered into by plaintiff with the various Chicago Terminal Railroads and with the Western Passenger Association, Chicago Terminal Lines, for and on behalf of each of the defendants—" which is all these railroads.

"—By these agreements the Chicago Terminal Railroads engaged plaintiff to render said transfer services and agreed that no other person, firm or corporation would be granted any right or privilege in connection with or be engaged or permitted to perform such transfer services in Chicago on their behalf. Plaintiff under said agree-
ment was required to meet all trains and to provide
2041 sufficient facilities, and have personnel available at all times to transfer all passengers and their accom-

panying checked or checked-through baggage to whom Chicago transfer coupons were sold or issued on through or combination railroad tickets.

"Said agreements require plaintiff to acquire, operate and maintain buildings, structures, vehicles, equipment and facilities specially designed for and dedicated to such transfer services, and to secure and establish, train and continuously supervise special personnel in the rendition of such transfer services, which services were required to be adequate, reliable and dependable."

Then there is more, but that is all that is necessary to show there was a contract and what its contents were.

2042 By Mr. McConnell: In view of the reading of that document in evidence, I ask leave to keep my case open until I get the answer which the railroads filed.

By the Court: I didn't quite get that.

By Mr. McConnell: He has given us a complaint here, and they filed an answer to that very same paragraph. If you are going to have Mr. Freeman's statement on behalf of Parmelee, I would like to have—were you the attorney?

By Mr. Thompson: I was not.

By Mr. McConnell: I would like to have the answer to it. But with that exception, I am ready to close.

By the Court: If it has relevancy, it certainly may go in.

By Mr. McConnell: All right.

By Mr. Thompson: We have a very limited number of witnesses, about three minutes apiece, to meet Mr. Krock's testimony which was new matter.

By the Court: All right.

Whereupon The Defendants, To Further Maintain The Issues In Their Behalf, Introduced The Following Evidence, In Surebuttal, As Follows:

2043 By Mr. Thompson: I will call Mr. Deitreich.

WALTER R. DEITREICH, called as a witness herein, on behalf of the Defendants in surrebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thompson.

Q. Will you state your name, please?

A. Walter R. Deitreich.

Q. What is your occupation?

A. Depot passenger agent at the Dearborn Station for the Santa Fe Railroad.

Q. How long have you been depot passenger agent at the Dearborn Street Station?

A. Since February 1st, 1950.

Q. You were on duty there then in the fall of 1955, from October 1 on through December, 1955?

A. I was.

Q. Were you there on October 1, 1955 when the change-over in interstation transfer service occurred?

A. Yes, I was.

Q. What was the facility arranged at the Dearborn Street Station for the loading and unloading of passengers in interstation transfer vehicles?

2044 A. Well, the loading was on the Plymouth Court side or the east side of the station.

Q. And was that a covered loading area?

A. Yes, it was.

Q. Permanently covered?

A. Permanently covered.

Q. Part of the station structure?

A. That is right.

Q. And where was the exit from the station to the loading area?

A. On the same side of the depot.

Q. Through the east wall of the building?

A. That is right.

Q. Now what occurred on the morning of October 1st when the trains began to arrive?

A. Well, the railroad transfer vehicles were on the east side of the station to get the first passengers, but after that the Parmelee system took over, as the transfer buses left.

Q. And these Parmelee vehicles occupied the space then, did they?

A. Yes, they did.

Q. And continued to occupy it?

A. That is right, sir.

2045 Q. For how long a period of time did the Parmelee transfer vehicles park there in the normal loading zone space?

A. Up until about 1956.

Q. Where did the Railroad Transfer Service do its loading?

A. Well, they finally moved to the west side of the station, which is Federal Street.

Q. Was there any cover over that area?

A. No, sir, there was not.

Q. What did the railroad do to take care of that situation?

A. Well, it was necessary to put up a canopy over the walk, and also install lights.

Q. Was there an exit door in the station structure?

A. No, sir.

Q. To the west?

A. No, sir.

Q. How did the passengers when they came in on the trains have to travel to get to the Railroad Transfer Service vehicles?

A. Through the entire length of the station to Polk Street.

Q. They came out the north side of the station
2046 on Polk Street?

A. That is right.

Q. And went west then to Federal Street?

A. Right.

Q. And around the corner to the vehicles?

A. That is correct.

Q. What vehicles were stationed along the front, on Polk Street?

A. That is a cab stand normally.

Q. Taxi cabs?

A. That is right, sir.

Q. All right.

Now on December 20, 1955, in the morning, between 8:30 a.m. and 9:30 a.m., were there 200 people, passengers, waiting in the loading area for interstation conveyance?

A. No, sir, there were not.

2047 Q. Were you on the job every morning at that period of time?

A. I was.

Q. At this particular time in the period from October 1 through December was there an occasion for you to give special attention to it?

A. Well, I gave special attention every day.

Q. Was there something—was this matter of the parking of the Armelee vehicles a matter that ever required further attention?

A. Yes, it was a nuisance.

By Mr. McConnell: I move to strike that out.

By the Court: I will strike it.

By Mr. Thompson:

Q. Well, anyway, did the fact that the two vehicles,

two sets of vehicles were there, cause you to give special attention to routing your passengers around?

A. Yes, sir.

Q. Was there any time in your experience after the Railroad Transfer Service, Inc., took over that there were 200 passengers or a number comparable thereto waiting at the loading zone for Railroad Transfer vehicles?

A. No, sir.

2048 Q. For forty-five minutes or an hour?

A. No.

Q. During the summer of 1956 were there a large number of persons at the Dearborn Street Station between the hours of seven o'clock and eight o'clock each morning waiting for transfer service for forty-five minutes or more?

A. No.

Q. Or in 1957?

A. No.

Q. How long from the time the passengers come to the loading zone for these interstation transfer vehicles elapses before they are loaded and on their way?

A. Well, they are taken care of immediately.

Q. And suppose there is an unusually heavy load coming in, what takes place on the train, I mean?

A. You mean—

Q. Do you have advance notice of this unusually heavy traffic load?

A. Yes, sir.

Q. What do you do with respect to arranging for the number of transfer vehicles?

A. We notify the agent on duty to have extra cars 2049 available.

Q. In the event that there was an insufficient number of transfer vehicles available, how were they reached when the Parmelee people were providing the service?

A. Well, the agent had to call each station to find out how many vehicles they had available.

Q. What about the Railroad Transfer Service?

A. Well, they have the radio service in their cars.

By Mr. McConnell: We have been over this several times backwards, forwards and up and down.

By the Court: Yes, I think you have gone over that a number of times.

By Mr. Thompson:

Q. What about the comparison between the services of the Railroad Transfer Service, Inc., after it took over on October 1, 1955, and the Parmelee service preceding with respect to the movement of the passengers promptly?

A. Well, I would say that the Parmelee service was good, but the Railroad Transfer Service was far superior.

By Mr. Thompson: You may cross-examine.

2050 *Cross Examination by Mr. McConnell.*

Q. Who are you employed by?

A. By the Santa Fe Railroad.

Q. That is one of the defendants in this case?

A. Yes, sir.

Q. How long have you been with the railroad?

A. I have been with them for 18 years.

Q. What is your present position?

A. Head depot passenger agent.

Q. Do you remember what day of the week December 20 was?

A. No, I don't.

Q. Do you remember what you wore that day?

A. Yes, I wore a brown suit.

Q. A brown suit?

A. That is right.

Q. What kind of shoes, did you have brown shoes, too?

A. Yes, sir, I did.
Q. This is how many years ago?
A. This is six years ago—five years ago.
Q. Well, did you have more than one suit?
A. I have several.
Q. Did you then?
2051 A. Absolutely.
Q. Do you remember where you had lunch that day?
A. I had my lunch in the same place every day, which is the Fred Harvey Restaurant.
Q. Well, did you have it there that day?
A. I sure did.
Q. Can you recall what you had for lunch?
A. No, sir.
Q. Can you recall who you had lunch with?
A. I usually have lunch by myself.
Q. Well, can you recall who you had lunch with that day?
A. I had lunch with myself.
Q. You are sure of that?
A. Yes, sir.
Q. On the 20th of December of 1955?
A. That is right.
Q. What was your position on December 20, 1955?
A. Head depot passenger agent for the Santa Fe Railroad.
Q. The same job you have now?
A. That is right, sir.
Q. Do you remember anything else you did that day besides observe traffic?
2052 A. I have my usual duties.
Q. Well, just tell us what you did that day, starting from the time you arrived in the morning, with what time you arrived.

A. I arrived at 7:00 a.m. and check the arrivals of the trains.

Q. What did you do that day?

A. The same thing.

Q. What trains arrived that day?

A. Well, the first train was the El Capitan, the Kansas City Chief, two sections of the Texas Chief, the California Chief, the Super Chief, the Grand Canyon and the Chicagoan.

Q. And you remember checking those trains on that day and remembering that those particular trains came in on that day?

A. Those are my specific duties.

Q. I didn't ask you that.

By Mr. McConnell: Read the question.

(Whereupon, the record was read as above recorded.)

By the Witness:

A. I do.

By Mr. McConnell:

2053 Q. Did you make any memorandum of what happened on the 20th of December of 1955?

A. I don't quite know what you mean by that.

Q. Do you know what a memorandum is?

A. I sure do.

Q. Did you make one that day?

A. Regarding what?

Q. Regarding anything, your duties, what you did during the course of the day.

A. I make quite a few memorandums during the day.

Q. Did you make any that day?

A. Yes, sir, I did.

Q. Did you keep it?

A. I keep mine for three years.

Q. And this is more than three years?

A. That is right.

Q. What do you make memoranda of?

A. Various different things.

Q. Thinks that happen?

A. That is right.

2054 Q. What is that for, to refresh your recollection?

A. No, it is required.

Q. Well, do you keep a diary during the course of the day?

A. We keep memos of everything, a file on it.

Q. But you don't have any of December 20, 1955?

A. Yes, we have some.

Q. I thought you said you destroyed them.

A. There are some that we destroy, some that we keep.

Q. Well, what ones have you kept?

A. The arrivals of the trains on December 20.

Q. You are sure you have that one?

A. Yes.

Q. Have you consulted it before you took the witness stand?

A. Yes, I did.

Q. When did you consult it?

A. This morning.

Q. Did somebody tell you to consult it?

A. No, sir.

Q. So you are remembering what you consulted from your memorandum this morning when you tell me these trains that came in, is that right?

2055 A. That is right.

Q. You weren't giving us your recollection of five years ago?

A. Yes, I was.

Q. Well, reinforced by your memorandum, is that it?

A. No; I just looked at it. That is all.

Q. You thought maybe I might ask you that question, is that it?

A. It could be.

Q. Did you have any conferences with anybody on that day, December 20, 1955?

A. To what extent?

Q. Well, any. Did you have any?

A. You mean on December 20?

Q. On December 20, yes.

A. Quite a few things. That is one of our busiest days. That is right in the holiday period.

Q. Well, now, you just tell us what you did in the way of conferring that day and who you conferred with?

A. Well, I conferred with my depot passenger agents every day of the year.

Q. Do you recall conferring with him on that day?

2056 A. Yes.

Q. So you had a conference with him. What time did you have a conference with him?

A. I have two shifts that come in.

Q. I didn't ask you that. What time did you have a conference with him?

A. Each time a train comes in we have a conference.

Q. All right. What time did you have a conference with him on December 20, 1955?

A. Just as the train came in, about 9:30 or so.

Q. What was he located?

A. He is in my office.

Q. Where was your office?

A. At the Dearborn Station, main floor.

Q. The main floor?

A. Yes.

Q. And you had a conference with him at 9:30. What is his name, by the way?

A. His name is Joe Fricka.

Q. You had a conference with him at 9:30. What was your next conference with him?

A. Well, that is hard to say. That is five years ago.

Q. I know it is five years ago.

2057 A. I don't remember that.

Q. You spoke of the parking of the Parmelee equipment. The place you described as being occupied by Parmelee equipment was a public street, was it not?

A. Yes, it is.

Q. You don't own it, your railroad doesn't own it, is that right?

A. That is right.

Q. And your railroad had no right to exclude Parmelee from that place, did they?

A. No.

Q. And Parmelee was licensed to occupy it and to solicit passengers?

A. That I don't know.

By Mr. Thompson: I object to that as calling for a legal conclusion.

By Mr. McConnell:

Q. You don't know whether they were or not, is that right?

A. That is right.

2058 Q. Who talked to you about your testimony in this case?

A. Mr. John Sloan.

Q. And he is what with the Santa Fe Railroad?

A. Assistant general passenger traffic manager.

Q. He is your superior?

A. That is right, sir.

Q. When did he talk to you?

A. Last Saturday.
Q. What time?
A. Approximately 3:30.
Q. What were you wearing last Saturday?
A. The same suit I have on today, and brown shoes.
Q. Brown shoes?
A. Yes.
Q. A tie—what kind of tie did you wear?
A. A blue one with red dots in it.
Q. Did you have lunch at the Harvey Restaurant?
A. I certainly did.
Q. Did you eat with anybody?
A. No, sir, by myself.
Q. What time was the date you had with Mr. Sloan?
A. 3:30.
Q. Did he call you into his office?
A. No, sir, he came down to my office.
2059 Q. How long was this discussion?
A. Approximately 20 or 30 minutes.
Q. Did you consult any records at that time?
A. Yes.
Q. What records did you consult?
A. The arrival of the trains on December 20.
Q. Those are the ones that you gave us, the El Capitan, the Kansas City Chief, the California Chief, the Grand Canyon and others?
A. That is correct.
Q. So at that time you didn't remember what the trains were did you; you had to look it up?
A. No, sir, I did not.
Q. You went and got the records to find out what it was, didn't you?
A. I know what my trains are that arrive daily.
Q. Why did you have to go to the records to find out what came in that day if you remembered it so well?

A. Just for the arrival time.

Q. What time did these trains arrive?

A. The El Capitan arrived about 9:47.

Q. Did you make a note of this off your records?

A. No, I didn't.

Q. But you read the record, and you noted the time?

2060 A. That is right.

Q. And I suppose you noted the time for each one of these from the records?

A. No, I did not.

Q. You remembered the time, did you, from five years ago?

A. No.

Q. Can you tell us any other time except for the El Capitan?

A. Yes, the two sections of the Texas Chief arrived at 9:47 and 10:00 o'clock, I believe it was. I am not definite on that.

Q. 9:47 is pretty definite isn't it?

A. It was approximately in between, take five minutes or so on it.

Q. 9:47 is a definite time. Do you recall that it got in at 9:47?

A. Between 9:47 and 10:00 o'clock. We had two sections that day.

Q. You remembered that from five years ago?

A. I certainly did.

Q. Not from the memorandum?

A. That is right.

Q. You remembered it got in at 9:47 five years ago without consulting any memoranda?

2061 A. Yes, I would say that.

Redirect Examination by Mr. Thompson.

Q. Do you wear a uniform over there?

A. No, sir, we do not.

By Mr. Thompson: That is all.

(Witness excused.)

By Mr. Thompson: I will call Mr. Bares.

JOHN E. BARES, called as a witness by the Defendants in surrebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thompson.

Q. Your name, please?

A. John E. Bares.

Q. What is your occupation?

A. Stationmaster, Grand Central Station.

Q. Where is your station or office at the Grand Central Station?

A. The station is at Harrison and Wells.

Q. Sir?

A. The station is at Harrison and Wells.

Q. I say, where is your station or place of posi-
2062 tion in the station?

A. I see. Well, the train concourse is just below my office, which is where the people come up from the train. They pass my office going up the steps to the concourse or the carriage court where the vehicles are parked.

Q. The Grand Central Station, this carriage court or circle where you load and unload is in the north side of the station, isn't it?

A. Yes.

Q. On Harrison Street?

A. That is right.

Q. And the entrance is from Harrison Street and they just go around a half circle and out again into Harrison Street?

A. Right.

Q. Now your office or place of working is immediately to the south of the middle of this half circle?

A. That is right.

Q. And then the railroad tracks are on beyond?

A. That is right.

Q. To the south?

A. The south.

2063 Q. What sort of a structure is it that you occupy when you are on duty there?

A. Well, the lower part of it is wood and stone, enclosed by all glass.

Q. So that you can observe the people coming off of the train, going to the station and loading?

A. All around the station except the waiting room.

Q. And loading in the vehicles?

A. Yes.

Q. Now how long have you been in that position at the Grand Central?

A. I have been stationmaster since 1919.

Q. You are the employee of the corporation that owns the station, aren't you, operates the station?

A. The B&OCT.

Q. Is it the Baltimore and Ohio Chicago Terminal Railroad?

A. That is right.

Q. And that is a local corporation that owns the railroad station and the trackage there?

A. Right.

Q. So you are serving all of the railroads that use that Grand Central Station?

A. That is right, sir.

2064 Q. You were on duty during the summer of 1956?

A. Yes.

Q. What time do you go on duty of a morning?

A. Seven o'clock.

Q. Now between the hours of seven o'clock and eight o'clock in the morning are there trains coming into this station?

A. There were.

Q. Regularly scheduled to come in?

A. That is right.

Q. Including what trains?

A. Well, the Baltimore and Ohio Washington Express got in about 6:30 then, that is standard time, and the Capitol, I think it was 7:00 o'clock then, and then we had the Columbian at 7:25.

Q. So that in that period approximately, this is all railroad standard time?

A. Yes.

Q. Chicago Daylight Saving Time in the summer it would be, whatever it is, an hour later or earlier?

A. An hour difference, somewhere in there.

Q. An hour difference and the clock says it is later?

A. Yes.

2065 Q. So that a train coming in at 7:00 o'clock railroad time, that is 8:00 o'clock city time?

A. Yes.

Q. Now between the hours of 7:00 and 8:00, let us say railroad time, were there generally passengers waiting at the loading platform forty-five minutes or so to get transferred?

A. I never knew that to my knowledge. Not while I was there.

Q. Was the same thing true in 1957?

A. It has never happened to my knowledge.

Q. Never happened?

A. I could say this, not to be too specific about it, for instance, if we had a snow storm or traffic was snarled, you might run into about thirty minutes or something like that but never forty-five minutes to an hour, I don't think.

Q. What length of time is your observation that it takes people to load into these interstation transfer vehicles in 1956 and 1957 after they were at the loading zone with their baggage ready to load?

A. From the time they were up there until they left?

Q. Yes.

A. I would say somewhere between ten and 2066 twenty minutes.

Q. And you know of no instance where there was a delay of thirty or forty or forty-five minutes?

A. No. I could say this, that I haven't received a complaint, and that is probably where they would come about it.

Q. You mean in all this period that the Railroad Transfer Service has been serving, since October 1, 1955?

A. That is right.

Q. Now as to getting the passengers away from the loading zone and on their way to the other stations, what is the comparison of the service of the Railroad Transfer Service and Parmelee?

A. Well, I think that this railroad transfer—

By Mr. McConnell: I object to this sort of a comparison.

By the Court: Yes, I think it is improper rebuttal. I don't think they touched upon that phase of it, or have they?

By Mr. Thompson: You mean Mr. Krock didn't?.

By the Court: Has he?

By Mr. McConnell: No. There was no compar-
2067 ison made in our case.

By the Court: Objection overruled. He may answer.

2068 By Mr. McConnell: I object to it. It invades the province of the jury. He can't pass on this. This is a jury question.

By the Court: Objection overruled. He may give his opinion.

By the Witness:

A. In my opinion, it is better due to the fact that the radio manipulated cars are able to be caught in between stations so they know where to go the next time when they unload.

By Mr. Thompson: You may cross examine.

Cross Examination by Mr. McConnell.

Q. How long were you there at that station?

A. Well, altogether I have been there 46-some years.

Q. You say there were waits of somewhere between ten and forty minutes?

A. No, I said that they took them about ten to twenty minutes to load the passengers, depending on the size of the train that came in.

Q. Have you ever heard of complaints about delays in the checked baggage by the Keeshin company?

A. No. Baggage wouldn't come to me. They would go to the baggage agent.

2069 Q. You are employed by the station?

A. Yes, I work for the B&OTC Railroad, who operate the station.

Q. Who owns the station?

A. The Baltimore and Ohio CT, as far as I know. I never saw the contract, deed, or anything like that, so I don't really know.

Q. The Baltimore and Ohio is a railroad, is it not?

A. That is right, the railroad.

Q. And they own the station?

A. They own it, or the B&OCT, I don't know.

Q. You don't know who owns the B&OCT, is that right?

A. I presume the B&O does, but I have never seen anything to prove it.

Q. Who asked you to testify here?

A. Well, the general manager asked me Saturday to be prepared to come up here if I was called, but I wasn't called until this morning.

Q. The general manager of what?

A. The B&OCT, Mr. Strayder.

Q. Did you talk to some lawyer?

A. I talked to Mr. Thompson this morning up here.

Q. Now, were your duties there at that station?

A. I am both station master and yard master.
2070 I have both duties, in charge of red caps, all the operations, tracking the trains, various other things, anything that may happen. Any complaints that might come in, they may come to me or go to the passenger department.

Q. What are your duties as yard master?

A. I handle all the equipment for the three railroads in the depot. That is head end cars, mail, express, you know.

Q. You are talking now about—what equipment are you referring to?

A. Head end equipment and the rear end equipment, as far as that goes. Head end equipment consists of mail and express cars, baggage cars, RPO cars.

Q. You supervise the unloading of those cars?

A. No, I don't supervise the unloading, but I supervise the switching and handling of the trains.

Q. When you are doing that job, where are you?

A. Probably down in the yard.

Q. And when you are down in the yard, you aren't watching what is coming in at the loading platform for transfer service, are you?

A. Usually at the time the train arrives—

Q. You aren't in the two places at the same time, are you?

2071 A. I can't be, and nobody else can be. That is understood.

Q. How far is the yard from—

A. The station extends from Harrison and Wells. My jurisdiction ends just about Taylor Street and Franklin and Wells.

Q. You might be a couple of blocks away if you were down in the yards?

A. As a rule when the trains arrive I am in the office.

Q. I say you could be a couple of blocks away?

A. If anything occurred, it would be more important for me to be there, I would be there, yes, wherever I thought it would be fit to be. That is where I would be.

Q. Well, you can't tell us where you were at any given period of time on any given day, can you?

A. I am not trying to.

Q. I say you can't, can you?

A. No, I wouldn't attempt to.

Q. And while you were down in the yards, things could happen up—

A. That is right.

Q. (Continuing)—in the station that you wouldn't

2072 know anything about?

A. That is perfectly right.

Q. Who is Mr. Eichner?

A. Eichner is in charge of mail and express, and his office is in Baltimore.

Q. Who was in the station that would have to do with complaints on baggage?

A. Mr. Tilquist. He is the baggage agent.

Q. Tilquist was employed by the station?

A. He is a B&OTC man.

By Mr. Thompson: What was the question?

(Whereupon the record was read as above recorded.)

By Mr. McConnell:

Q. Do you know whether Mr. Eichner was here in 1955?

A. No, I don't. I don't have any connection with him whatever.

2073 Q. Did you ever have any connection with anybody at Parmelee? I mean, did you ever take up with them any complaints of any kind?

A. Well, usually my complaints would come direct from the passengers, so there wouldn't be anything on paper, and those complaints that came to the passenger department, I would probably be asked about, but that would be all. After that it would skip my mind because they were handling it, so I don't—

Q. You don't recall ever making any complaints to Mr. Scheeder?

A. This gentleman that was sitting here, you mean?

Q. Yes.

A. No. I never use paper. I use the telephone.

Q. I didn't ask you whether you ever used paper. I asked you whether you ever made any complaints to Mr. Scheeder?

A. I made complaints to the Parmelee Company, yes. I usually done it through the agent.

Q. I didn't ask you that. Did you or didn't you?

A. No, I didn't. I don't believe he was on the job then, to tell you the truth?

Q. When?

A. You say what year?

2074 Q. I am talking about any year you are there. You have been there forty-six years.

A. That is right. I don't know how long he has been there.

Q. Well, I am just asking you, in your forty-six years in that position, if you ever made any complaint to Mr Scheeder and I take it your answer is no.

A. No.

By Mr. Thompson: Of course, the question is whether the witness could identify Mr. Scheeder when he is telephoning the Parmelee Company to make his complaints.

By Mr. McConnell: Well, it is nice to have your testimony on this, but I move to strike it out.

By the Court: It may be stricken.

By Mr. Thompson: Objection.

By Mr. McConnell:

Q. You never wrote any complaints you said?

A. No.

By Mr. McConnell: I have no further questions.

By Mr. Thompson: That is all.

(Witness excused.)

2075 By Mr. Thompson: Defendants rest.

By the Court: Both sides rest?

By Mr. McConnell: No. You can't rest yet, Judge Thompson.

By Mr. Thompson: Can't I?

By Mr. McConnell: No, because I haven't rested.

By Mr. Meserow: You have rested about three times.

By Mr. McConnell: No, I didn't. I have a very express understanding with the Judge that I will be permitted—

By the Court: Except as to the admissibility of an answer. I want to let the jury go home, if we can.

By Mr. McConnell: I want to read something to the jury before they go and then I am through. I don't want to hold you more than thirty seconds.

By the Court: All right. You are reading from an answer?

By Mr. McConnell: I will first have it marked and offer it in evidence as Plaintiff's Exhibit 161.

(Thereupon the said document was marked Plaintiff's Exhibit 161, for identification.)

By Mr. McConnell: I offer it in evidence as a copy of the answer filed by the firm of Winston, Strawn, 2078 Smith and Patterson, as attorneys for Earl B. Padrick as agent for the Chicago Terminal Lines and all defendants.

By Mr. Meserow: If the Court please, I am going to object on behalf of Keeshin and the Railroad Transfer Service. We are not parties to that suit, had nothing to do with it, no connection whatsoever and it is not binding on us at all.

By the Court: It is admitted only to these parties to the answer if it is admissible, I haven't heard yet what it is.

By Mr. McConnell: It is the answer, your Honor, to the complaint.

By the Court: I didn't mean admissible. If it is relevant.

You may show it to Judge Thompson.

By Mr. Thompson: I would like to look at it because I don't happen to be a party to that lawsuit and I don't believe you were.

By Mr. McConnell: No, I wasn't in it. I have enough suits with you now without getting into any more.

By Mr. Thompson: I missed that gem.

No objection.

By the Court: It may be admitted.

2077 By Mr. Thompson: Except it is hearsay.

By Mr. McConnell: Well, it is hearsay, all right.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 161.)

By Mr. McConnell: Page 7 of the complaint — this is in evidence, if the Court please.

It is alleged in the complaint:

> "During all times material plaintiff rendered adequate, reliable and dependable transfer services at reasonable rates and charges, and at all times made available sufficient buildings, structures, vehicles, equipment, facilities and trained and efficient personnel to conveniently handle all transfer traffic which might be presented in fulfillment of all terms and conditions of its agreements with each of the defendants."

Now that is the second sentence in Paragraph 7, and the answer is:

> "Admit the allegations in the second sentence of Paragraph 7."

With that plaintiff rests.

2078 Thereupon the plaintiff rested its case in rebuttal.

By the Court: Both sides rest?

By Mr. Thompson: That is right.

Thereupon the defendants rested their case in surrebuttal.

2079 By the Court: All right.

Have a nice evening. We have seen the end of the testimony. Tomorrow you will hear the arguments of counsel.

We will start tomorrow morning at 10:00 o'clock sharp. Please don't discuss this case with anyone. We have one more day to go. I will not admonish you anymore.

By Mr. McConnell: May I say something?

By the Court: Yes, sure.

By Mr. McConnell: You are starting at 10:00. I have that thing that I have been talking to your Honor about that was set at 9:30 in the morning so that I could be there and be back here at 10:30.

By Mr. Thompson: Can't they put it over once more so we can get through tomorrow?

By the Court: I have given you my word, and I will keep faith with you. Could Mr. Freeman discuss the instructions in the morning in your absence?

By Mr. McConnell: Yes, I think so.

By the Court: You will be here at 10:00 o'clock, ladies and gentlemen.

I might say this to you, if I may. In all fairness to you folks, you may leave word at your homes, respec-
2080 tively, that you may be tied up a little later tomorrow night. If the arguments last a little longer, you will get the case a little later, and once you get it, you have got to deliberate.

So I am merely alerting you now so that nobody should worry about poor you not coming home on time or getting supper ready.

Good night, and have a nice evening.

2081 (And thereupon the following proceedings were had outside the presence and hearing of the jury:)

By Mr. Thompson: I have instructions.

By the Court: I would like to meet with the lawyers tomorrow at 9:30, if I may, and we will discuss the instructions. Do you want to open the arguments?

By Mr. Freeman: Mr. McConnell will open.

By Mr. McConnell: I will open, your Honor.

By the Court: And close?

By Mr. McConnell: Yes. I will be here as soon as I can.

By Mr. Thompson: We will never get this case to the jury tomorrow unless —

By Mr. McConnell: Other people around here have engagements, too.

By Mr. Thompson: I have others, too, but this is the one we have to meet. We are never going to get this case to the jury at a decent time if we don't start right off. We have to start.

By Mr. McConnell: All we are asking of the court is half an hour.

By the Court: I said, I gave you my word. We didn't specify what time, but I never interfer with a lawyer
2082 with an intervening few minutes. You come here as soon as you can.

By Mr. Thompson: Why can't we be here at 9:30?

By Mr. Freeman: I don't want to discuss the instructions with the Judge and with you, as I would rather Mr. McConnell do so.

By the Court: You mean you wouldn't discuss them without him?

By Mr. Freeman: I would rather not. I think the responsibility for this case has been Mr. McConnell's. I have only tried to help out on offers of proof.

By Mr. Thompson: We won't get to the jury until noon.

By Mr. McConnell: I don't think we will take much time on instructions.

By Mr. Thompson: As far as I am concerned, I don't care if we spend any time on it.

I hand the Court the instructions I request, and I hand

counsel copies, and you can pass on them. I don't need to argue them.

2083 By the Court: Have you your instructions here?

By Mr. McConnell: Yes.

By the Court: Have you exchanged instructions among yourselves?

By Mr. Thompson: Not yet.

By the Court: I wish you would now hand each other copies of your respective instructions.

By Mr. McConnell: Have you the instructions here or not?

By Mr. Francis McConnell: Yes.

By the Court: Give each one a copy of the instructions, and I will take a copy of yours, too, and you can read them so that we will not spend much time.

By Mr. Meserow: Do you want any markings that they came from our side?

By Mr. McConnell: I can see right away we will have some argument on these from looking at one.

By Mr. Thompson: Judge Adesko will accommodate you again in the morning, I am sure, my dear sir. We are never going to get to the jury.

By the Court: We will have the reporter there and the arguments on each one, and I will rule on each one separately. I would like you to mark the plaintiff's A, B, C, and so forth, and the defendants' 1, 2, and 3, so

2084 that when we speak of them for the record we will know what we are talking about, which instruction we are talking about.

By Mr. Meserow: Why don't we do it now?

By Mr. Tone: May we do it now, your Honor?

By Mr. Thompson: I will just do it with the lead pencil. If you are going to send these to the jury there should be no numbers on them.

By the Court: Give me a carbon copy. I want the carbon copy.

By Mr. Thompson: You have the original.

By the Court: You keep them. I just want a carbon copy marked, and you can give them to me tomorrow.

By Mr. Thompson: I wanted to get you to work tonight.

By the Court: I will check them, but I want a carbon copy instead of the originals.

By Mr. Thompson: Right now?

By the Court: Yes. This is your carbon copy?

By Mr. Thompson: Yes.

By the Court: It is the defendants' carbon copy, and the plaintiff's will be A, B, C, and so forth.

By Mr. Thompson: I suppose they are in the same order, aren't they? Do you want me to keep the originals?

By the Court: Yes, and give them to me tomor-
2085 row morning.

By Mr. Thompson: Can you be here, please, Mr. McConnell?

By Mr. McConnell: Judge, we are going to get through with this case tomorrow. There is no doubt about it, no question about it.

By the Court: I said you may come in when you get through over there.

By Mr. McConnell: As soon as I get through I will come over. That case to me is just as important as this one. I was in it for nine solid weeks on trial, and I am still on trial. Technically I am still on trial. I am supposed to be there.

By the Court: All right; we have passed that one.

By Mr. McConnell: I would like, if I can, to read these myself. This has been prepared in my office. I have never had a chance to see these instructions.

By the Court: Tomorrow morning you bring them in with you. Could we do this?

If we can save an hour, do you have to work tonight on the other case?

By Mr. McConnell: Yes, I do.

By the Court: All right, tomorrow morning as soon as you can come in, and I will set it down here for 10:15.

By Mr. McConnell: I may be here at 10:00 2086 o'clock, but I will be here as fast as I can.

By Mr. Thompson: I wouldn't want you to strain yourself.

(Whereupon an adjournment was taken in the hearing of the above-entitled case to the following day, Tuesday, May 10, 1960, at the hour of 10:00 o'clock a.m.)

2087 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Tuesday, May 10, 1960,
10:00 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Bonn, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

2088 Present (Continued):

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

2089 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company *v.* John L. Keeshin, et al. Case on trial.

(Whereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: Are you ready for the instructions, all of you? Have you exchanged instructions with each other? Do you want to come in chambers?

By Mr. McConnell: I think we had better do it out here, because we have so many papers.

By the Court: All right. Excuse me a moment.

(Whereupon a short recess was had, after which the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: All right, gentlemen. We will take the plaintiff's first.

By Mr. McConnell: Maybe you had better have
2090 the originals, your Honor; you can read them easier.

By the Court: I can read these all right. If we reject some, I want the parties to take them out and mark them. Well, I had better have the originals, so I can mark them "Refused," the ones that are refused.

By Mr. McConnell: I would like the carbon back, if I may, because that is the only copy I have to refer to.

By the Court: Fine.

By Mr. Thompson: If the Court please, before we start with the instructions, now at the close of all of the evidence, defendants, by their atterneys, move for a directed verdict and the entry of a judgment in our favor on the ground there is no substantial evidence or any evidence sufficient to support a finding that the selection by the Chicago terminal railroads of the defendant, Railroad Transfer Service, Inc., rather than plaintiff, Parmelee Transportation Company, to perform the Chicago interstation transfer service from and after October 1, 1955 was reasonably calculated to injure the public or that the public has suffered any injury, any lessening of service or the loss of superior service as a result of said selection.

2091 There is no substantial evidence or any evidence sufficient to support a finding that any increase of the cost of transfer coupons which might have occurred as a result of the selection of Railroad Transfer Service, Inc., to perform the service was passed upon to the traveling public through any increase in fares, or that plaintiff would have rendered a service superior or equal in quality or extent to the service rendered by Railroad Transfer Service, Inc., or that plaintiff would have been able to carry on the service without interruption by reason of a strike or strikes by its employees, or that plaintiff would not have terminated the service by reason of inability to make a satisfactory wage settlement with its employees.

This we will file in writing as soon as we have time to get it in shape.

By Mr. McConnell: I would like to make a motion for a directed verdict on the special issue that has been defined or set up, at least, by your Honor, and the ground

of my motion which I likewise would like leave to support in writing for the record is that the contract which is in evidence creates a price-fixing provision as to the baggage which is checked and as to the pickup and
2092 delivery baggage and as to the transfer of remains, being an agreement between all the railroads on the one hand, competing railroads who were doing business with the Keeshin Company, and the transfer company on the other.

Under every decision that I am familiar with that has dealt with this matter by the Supreme Court such arrangements, price-fixing arrangements are illegal per se, and even in the case which your Honor stated you were relying on by Judge Latham Castle, he makes that distinction.

That is that the public injury is manifest once you show there is an agreement to fix prices of services or commodities in interstate commerce.

I want to point out that Judge Major once undertook for this Court of Appeals to carve out an exception of that rule by the Socony Vacuum Case, and he was reversed by the Supreme Court, the Supreme Court saying it doesn't make any difference how you fix the prices up or down, that anything you did with prices was illegal per se under the Anti-trust laws, that you could not be justified by any showing of reasonableness.

There isn't any denial of the contract. The contract is in evidence, and it expressly provides what the charges are. It says there will be a tariff rate of charges
2093 on the pickup and delivery service, that these are to be paid by the passengers, not by the companies or by the railroads.

As to baggage which is being carried over from one station to another to be checked, it is provided that each piece is twenty-five cents, and the parties doing the carry-

ing have to charge that to the public so that the parties are agreeing among themselves what the public is to pay, a direct injury to the public.

2094 It is direct injury to the public under every applicable decision that ever had anything to do with that subject. I don't want to labor the point, but I want to read to your Honor what the court said about it in the Masonite case referring to price fixing.

I am reading from United States v. Masonite Corporation — that is that building supply company — 316 U.S., at page 282. It is 86 Law Edition, page 1477.

The Court said:

> "The power of Masonite to fix the price of the product which it manufactures, and which the entire group sells and with respect to which all have been and are now actual or potential competitors, is a powerful inducement to abandon competition. The extent to which that inducement in a given case will have or has had the desired effect is difficult, if not impossible, of measurement. The forces which that influence puts to work are subtle and incalculable. Active and vigorous competition then tends to be
>
> 2095 impaired not from any preference of the public for the patented product but from the preference of the competitors for a mutual arrangement for price fixing which promises more profit if the parties abandon rather than maintain competition. The presence of competing patents serves merely to accentuate that tendency and to underline the potency of the forces at work."

Then they say:

> "It is outside our competence to inquire whether the result was or was not beneficent or whether the evil was or was not realized. As in case of an ap-

praisal of the reasonableness of prices which are fixed, such a determination could satisfactorily be made 'only after a complete survey of our economic organization and a choice between rival philosophies.' The power of this type of combination to inflict the kind of public injury which the Sherman Act condemns renders it illegal per se."

I could read many decisions on it, but here there
2096 is no question, no dispute in the evidence about it.

We have a contract which fixes the price of carrying baggage for a million and a half people that use the service every year, and on that ground I move for a directed verdict.

2097 By Mr. Thompson: In view of the motion that has just been made, we add to our motion for judgment for the defendants that the complaint fails to state a claim upon which relief can be granted, and that the offers of proof made by plaintiff do not establish the violation of the Anti-trust laws even if they were accepted.

By the Court: I have indicated before or some time ago that I felt strongly that the plaintiff did not bring its case within the family of anti-trust law on the proof submitted and on the offers of proof, and I am as strongly so inclined now as I ever have been, and I will so hold.

I will ask the defendants' counsel to prepare a findings of fact and conclusions of law on the subjects that I have outlined in the record heretofore:

First, as to the contract, the railroads had a right to act concertedly in the granting of the contract, and that no question of monopoly enters into it;

That they had a right to, and that the defendant corporation, the Railroad Transfer, had a right to accept that contract without any concern about the anti-trust

law and without any monopoly;

2098 That it has covered the same subject matter that the plaintiff has enjoyed for many years under similar circumstances and conditions, and virtually in the same territory, I think.

Secondly, they have said, and I want to make findings of fact and law on it, that in the Atchison case *v.* City of Chicago adjudicated by the Court of Appeals and the Supreme Court of the United States, subsequent to the holding by Judge Sullivan that the pleadings were sufficient in the allegations, the Court has held and Parmelee is bound by it because it intervened in that case—in those cases, all three of them, before Judge LaBuy, before the Court of Appeals, and before the Supreme Court of the United States—that the matter belongs under Interstate Commerce. A contract was filed with the Interstate Commerce Commission, and the subject matter is entirely under its jurisdiction.

Finally, on the motion for a directed verdict made at the conclusion of the plaintiff's case, I took it under advisement then, and I will take it under advisement now, although I strongly feel and I intend to so instruct the jury that only the services covered by the contract awarded to the defendant corporation by the rail-

2099 roads and contained in the bid of the plaintiff for such services and that scope are the only issues before this jury; nothing else.

Any other services that they may have rendered voluntarily or by private arrangement with the public is no concern of this court or of this jury, and therefore it ought not to belong in any consideration by this jury.

I feel inclined to agree with the defendants that under that ruling the plaintiff has failed to prove a case, but I am going to reserve my ruling and submit it to the jury in order to complete the record so that the Court

of Appeals will have exactly what has been done here, what has been said here, what has been found here, and what has been held here.

Both motions will be overruled, and I am reserving my ruling until after the verdict is in.

2100 By Mr. McConnell: If the Court please, on the question of findings of fact which you are asking counsel for the defendants to prepare and submit, we have brought an anti-trust case in this court within the rules of this court and the Constitution of the United States. We asked for a jury trial: We have never waived our jury trial, and we submit that findings of fact or issues of fact as presented by the pleadings are for the jury, and I want the record to show that.

By the Court: That is correct, except when the Court holds that the case has not been made out. That is a question of law, and that I am going to decide upon in my own findings of fact, on the facts submitted to me and on the offers of proof.

I am going to find that if everything is proven and established, it does not constitute a cause of action such as is contemplated by the complaint, and does not belong in the family of anti-trust law.

By Mr. McConnell: That is a question of law which your Honor is within his province on, but I am referring, so the record will be perfectly clear, I am taking the position that any question of fact within the issues in this case is a jury question and we object to findings of

2101 fact by the Court.

By the Court: You are right, counsel. I did not mean to say I want to make findings of fact. I want to recite in there the proof offered before me and the offers of proof made before me, and I will conclude as a matter of law that it does not constitute a good cause of action.

All right, let's talk about the instructions now. I have read the defense instructions so let's go over them first.

By Mr. Thompson: You are taking up defendants' instructions first?

By the Court: Yes. Defendants' instructions first, No. 1—

By Mr. Thompson: Before we leave these preliminary matters, I want to be certain that the issue of damages and also the counterclaims of the defendants which are in the record are continued for further disposition.

By the Court: Oh, yes. I have nothing before me on that at all, and I cannot pass any judgment. I will reserve the entire matter on the counterclaims. No offer of proof has been made and no testimony has been offered, and I cannot do any adjudicating.

By Mr. Thompson: I just want to know that
2102 they are separated and continued for later disposition.

By the Court: No question about it.

Defendants' Instruction No. 1, I think the word "before" is misspelled, the very first word in the original. If you will make that correction, please.

By Mr. McConnell: That is a stock instruction, I guess. We don't have any objection to that one.

By the Court: No objection. All right.

2103 By the Court: All right, No. 2.

By Mr. McConnell: Well, I object to the phrasing of this.

"This is a civil suit and in determination of your verdict, you are the judges only of the facts."

They are the sole judges of the facts. I don't know why the jury should be crowded into the position that they are only the judges of the facts.

It is all right if your Honor wants to tell them you are

the sole expounder of the law, and that the province of the jury is to find the facts, but they are the sole judges of the facts if it is going to go to the jury.

By the Court: I have no objection to changing it to "the sole judges of the facts."

By Mr. McConneell: Aside from that, I have no objection to the instruction.

By the Court: I have put in the words "You are the sole judges"; and I struck out "only"—the rest of it reading "of the facts."

That is No. 2.

All right, No. 3.

By Mr. McConnell: I have no objection to No. 3.

2104 By the Court: All right, No. 4.

By Mr. McConnell: Well, I object to the first sentence of this instruction. There is no objection to the remarks, innuendos and insinuations.

By the Court: You object in the original objection of separation of issues.

By Mr. McConnell: I think that that instruction should cover the entire issue, not just running it in with this. There are other instructions on that. We have some ourselves.

By the Court: I will read yours, but I will give this one.

No. 5.

By Mr. McConnell: You are going to give No. 4?

By the Court: Yes.

By Mr. McConnell: I except to the giving of No. 4.

By the Court: No. 5.

By Mr. McConnell: The verdict, of course, must be based upon the evidence, but the jury has a right to infer from evidence certain conclusions.

This would tend to leave them with the belief they couldn't. I object as limiting them too much.

By the Court: Overruled. I will give it.

2105 By Mr. McConnell: Exception.

By the Court: Let the record show an exception. No. 6 is a stock instruction.

2106 By Mr. McConnell: That is all right, but I don't see the use of repeating the same instruction over and over again. We have told them that in several different ways. I have no particular objection to it, except it is repetitious.

By the Court: No. 7.

By Mr. McConnell: I don't think that is a correct instruction on the preponderance of evidence. Objection.

By the Court: I will give it.

By Mr. McConnell: Exception.

By the Court: No. 8.

By Mr. McConnell: I have no objection to No. 8.

By the Court: No objection. All right.

No. 9.

By Mr. McConnell: This is a proper element. No. 9 says the jury can't consider evidence that is in the record. We have evidence in the record of what the coupon rates are by the different parties. That is relevant on whether or not the reasons given for changing this service were as stated.

We certainly have a right for the jury to consider the evidence which they offered, of the difference in rate, and so forth.

2107 You have an instruction here that it doesn't affect the charge to the public.

By the Court: This instruction, I think, goes to the very heart of my ruling, and I am going to give it.

By Mr. McConnell: Exception.

By the Court: Note the exception.

By Mr. McConnell: We are very seriously prejudiced by the giving of that instruction.

That is a peremptory instruction, your Honor.

By Mr. Thompson: You are still talking about No. 9?

By Mr. McConnell: Yes. That is a peremptory instruction.

By the Court: I will give it.

Pardon me a second, please.

(Whereupon a short recess was had herein, after which the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: All right.

By Mr. Meserow: No. 10 is next.

By the Court: No. 10.

2108 By Mr. McConnell: This instruction tells the jury that if you violate the anti-trust laws—in effect it tells them that—that the fellow who does the violating, giving better service than the one who is the victim, that there is no violation, and I think that is not the law, absolutely not the law, and I object to it.

By the Court: I will give it.

By Mr. McConnell: Exception.

No. 11 is an instruction that people who are members of the public, as I read it.

By the Court: That is correct, not as such.

By Mr. McConnell: I object to giving that.

By the Court: I will give it.

By Mr. McConnell: Exception to the giving.

By the Court: That is all right.

By Mr. McConnell: And No. 12:

"The jury is instructed as a matter of law an exclusive contract with one transfer company executed jointly with the Chicago terminal railroads does not constitute violation of the anti-trust laws."

2109 I have filed briefs with your Honor.

By the Court: That goes directly to the heart of it, and I will give it.

By Mr. McConnell: I am going to except to it.

By the Court: All right.

2110 By Mr. McConnell: Same objection to this as to the other, that the comparison of those services does not come within the purview.

By the Court: I will give it. No. 13.

By Mr. McConnell: Exception.

By the Court: No. 14.

By Mr. McConnell: Same objection to that. Comparison of the two is the sole proof of public injury.

By the Court: I will give it.

By Mr. McConnell: Exception to the ruling.

By the Court: All right.

By Mr. McConnell: Our suggestion on this is that the form of verdict should be:

"Do you or do you not find public injury?"

By the Court: I have never seen this form of verdict.

By Mr. McConnell: This is signed by all the jurors. The foreman of the jury signs the verdict, as I understand the law.

By Mr. Thompson: It is an interrogatory that is going to be submitted to the jury. When you separate the issues you have an interrogatory submitted to the jury,

2111 and the interrogatory will be answered yes or no as they were instructed in Instruction No. 14.

By Mr. McConnell: Could you reserve your ruling on that until you see our selected form of verdict?

By the Court: Yes, I will hold it up on that.

Now, we will take the plaintiff's. I think all of your objections, Mr. McConnell, are based on the original propo-

sition which I have ruled on at the outset, and do not go to the form of verdict, because these instructions are merely in line with what I have said all through the hearing, and I am standing by them, as a matter of law.

By Mr. Freeman: Your Honor, I don't understand your ruling to be that way. For example, when we objected to the exclusions of portions with reference to the public or the entire public you said, "Yes, under these circumstances."

I don't understand that.

By the Court: Which is that? You are talking about the stockholders?

By Mr. Freeman: Yes.

By the Court: They are litigants. They are not the public. Stockholders and the railroads are not the public in this lawsuit as such, because they are litigants, 2112 and they are parties to it.

No. A.

By Mr. McConnell: This is a stock instruction.

By Mr. Freeman: Your Honor, may I say further in that regard, there are twenty-one railroads involved. The defendants and litigants in this case are only six railroads, so we do have a segment of the public that you are now excluding, the railroads as well as the stockholders, and I wondered if you intended to restrict the issues even further than you had previously ruled?

By the Court: They are parties to the contract, as I understand it.

By Mr. Freeman: They are not parties to the litigation.

By the Court: They are parties to the contract, as I understand it, and all twenty-one are parties to the contract and beneficiaries of the service.

By Mr. Thompson: That is right.

By the Court: All right.

By Mr. Thompson: No. A is the same in substance as our No. 1, and we don't care which one is given.

By the Court: I think it is repetition.

By Mr. McConnell: It is a pretty good instruction,
2113 though.

By Mr. Thompson: Both of them are. I say they are both the same thing practically.

By the Court: I have no objection, and I will substitute yours for the first one here.

By Mr. Thompson: Your Honor, you may want to look at the two of them and see which one of them you want to give. It doesn't make any difference to us. You don't want to give both of them.

By the Court: All right.

By Mr. McConnell: There is more in ours than in yours.

By the Court: I will give theirs, and either you withdraw yours, your No. 1, or I will refuse it, either way.

By Mr. Thompson: Whatever the Court does.

By the Court: I will mark No. 1 refused, and I will give theirs, their No. A.

By Mr. Thompson: They are the Court's instructions, not ours, of course.

By the Court: All right, I am giving theirs.

By Mr. McConnell: I will be just as generous as Judge Thompson, and I will withdraw No. B, because they have one that covers it.

By the Court: No. B?

2114 By Mr. McConnell: Yes.

By the Court: All right; No. B is withdrawn.

By Mr. McConnell: They have one that covers the same subject.

By the Court: Do you want to take it back, No. B?

I have no carbon set, of course, and I am only handling them as they are, the originals.

2115 By Mr. McConnell: I think Instruction C should be given. It is a stock instruction. You have told the jury that several times.

By the Court: I have given one complete instruction on that so I will refuse C, only because it is repetitious.

By Mr. McConnell: You haven't given this. You haven't got anything about "therefore during the progress of the trial—". That is a very important instruction in view of all the by-play and talk.

By the Court: What is that?

By Mr. McConnell: "If therefore during the progress of the trial you gather any impression from anything which the Court may have asked of a witness or may have stated in his rulings or in the course of discussion with or of counsel with respect to the facts of this case or the weight of the evidence or the credibility of any witness, you should disregard that impression."

Certainly in this case we have had enough talk in the papers and elsewhere so that this is very important.

2116 By the Court: I see no objection. I am sorry I marked it "Refused."

By Mr. Freeman: Do you want a carbon of it so your copy won't show that?

By the Court: Yes. I will take a carbon and I will give that one.

Let the record show that Instruction C is given.

By Mr. Thompson: We have got one that duplicates it. Your Honor can look through them and make a choice.

By the Court: I don't mind that duplication.

By Mr. McConnell: Instruction D is a stock instruction.

By the Court: I have no objection. That will be given. Instruction E.

By Mr. McConnell: That is a stock instruction. I think hat should probably be "as defined by other instructions." 'hat should be added to that.

By Mr. Thompson: Of course, D is not a proper instruction.

"The Court instructs you that if you believe a
117 witness has testified falsely as to a material issue of fact, you are free to disregard any and all of the testimony of the witness."

By the Court: That is correct, unless it is corroborated by other credible evidence, and so on.

By Mr. McConnell: Yes, that can be in there. I have o objection to that.

By the Court: I am going to give two instructions f my own. It will be the same as you have got here on he preponderance of the evidence. I don't like the brevity f this. I will submit it to you before I give it, for both) and E.

By Mr. McConnell: All right.

By the Court: I will mark both of them "Refused" for he record so there will be no question that we have had hem before us.

I want to make a note here this is on witness testifying a'sely and the other one is preponderance of evidence.

All right.

By Mr. McConnell: The next one is the number of vitnesses. That is a stock instruction, Instruction F.

By the Court: I am going to refuse it. I will give
118 one of my own on the number of witnesses. I don't think I want to associate it with either side.

I will mark this one, Instruction F, "Refused."

By Mr. McConnell: Instruction G, I think has already been given.

By the Court: Do you want to withdraw G? I have given it?

By Mr. Thompson: Yes.

By Mr. McConnell: I will withdraw it.

By the Court: Instruction H.

By Mr. Thompson: Of course, that is clearly contrary to what the Court has been ruling all the way through. Pickup and delivery service is not part of the contract.

By Mr. McConnell: It is right in the contract.

By Mr. Freeman: It is in the contract.

By Mr. McConnell: Right in there, right in the middle of the contract.

2119 By Mr. Thompson: All that is in there is the service existed and they should keep it up. There is nothing in there about prices.

By Mr. Freeman: Yes, there is.

By Mr. McConnell: Yes.

By the Court: I will mark it refused.

By Mr. Freeman: Do you want to see where the references are in the contract, your Honor?

By the Court: I have given the instruction on the question of the contract.

By Mr. Freeman: This is in the contract. Paragraph 9 says, "Transfer agrees to furnish and perform the following services collectively referred to as baggage pickup and delivery service within the terminal area."

Then there are a whole series of provisions with respect to that, and in the middle it says:

> "Transfer shall be entitled to receive compensation computed in accordance with the following schedule for services rendered by it,"

and then there are the Schedules D-1, 2 and 3. They go on to discuss the matter of what rate shall be received

for baggage and delivery service within the metro-
2120 politan area.

By the Court: Except the words "pickup and delivery of checked baggage" have been used in phases other than the contract provisions.

By Mr. Freeman: It should be pickup and delivery of baggage. I mean that is exactly—

By the Court: If you want to submit another one. This I have marked refused. What I am trying to say is within the purview of the contract—

By Mr. McConnell: Strike out "checked baggage".

By the Court: Within the provisions of the contract.

By Mr. McConnell: That is all right, within the provisions of the contract.

By Mr. Meserow: How is that being modified? The word "checked" is out?

By Mr. McConnell: And "within the provisions of the contract."

It will read:

"In connection with the pickup and delivery of baggage within the provisions of the contract."

Now, if it isn't within it, why, there is no harm.

By the Court: That is all right.

2125 By Mr. McConnell: That is given?

By Mr. Freeman: You are accepting this one?

By the Court: Rewrite it. I will have my girl rewrite it. This is Instruction H.

By Mr. Thompson: What is Instruction H? The changes are "pickup and delivery of baggage within the provisions of the contract"?

By Mr. McConnell: That is right.

By Mr. Meserow: There is nothing said in the contract about rate of charge that they use in this instruction. "Rate of charge."

By Mr. Freeman: I just read it to you.

By Mr. McConnell: There is rate of charge set out.

By Mr. Keating: The contract says in accordance with the tariffs.

By Mr. McConnell: That is right, and we have testimony of what the tariffs are.

By Mr. Meserow: There were two witnesses, one of theirs and one of ours, that testified the pickup and delivery of baggage was separate and distinct from the deal with the railroads. They had nothing to do with it. They didn't pay for it.

By Mr. McConnell: It is right in the contract. It says so, and you all agreed on it.

2122 By Mr. Keating: The railroads don't set the tariff.

By Mr. McConnell: They did.

By Mr. Freeman: They do set the tariffs.

By Mr. McConnell: In the contract. If it isn't within the contract, it doesn't hurt anybody, does it? If it is within the contract, we have a right to have it.

By Mr. Thompson: Well, that is submitting to the jury a question that should never be submitted to the jury.

By Mr. McConnell: The contract is in evidence.

By Mr. Thompson: The construction—

By the Court: This is pickup of baggage from—

By Mr. Meserow: From homes, your Honor, and the transfer company can charge anything they want, and the railroads can't do anything about it, and they have no control over it. They do not get the revenue.

By the Court: I will mark this refused.

By Mr. Freeman: May I have my copy back, your Honor?

By the Court: Yes.

By Mr. Freeman: Are you going to mark your own copy?

By the Court: I have marked that refused.

By Mr. Freeman: Thank you. I just want to keep your set straight.

2123 By Mr. McConnell: Instruction I has to do with the 82 mile radius where the passenger pays for the transportation, and we have had lots of testimony about it in the record and we have got the evidence in the record that it varies according to the coupon rate variation. This is part that the public pays, public as defined by your Honor, and as the coupon rate varies the charge for this service varies, so that it makes a difference between the two on the coupon rates.

By Mr. Thompson: There is no proof in this record that any passenger ever bought a through ticket within the 82 miles radius. There is no proof on the subject. It is simply an academic question.

By Mr. McConnell: There is no proof that anybody ever traveled on a railroad as far as that is concerned. They said there were a million and a half passengers going through here.

By the Court: I have heard it, but what is the 82 mile radius?

By Mr. Freeman: Mr. Padrick testified, your Honor, that if a passenger is destined to a location in the Chicago area within 82 miles of Chicago, that passenger, if he wants a transfer through Chicago, is required

2124 to pay all or a part of the transfer cost. He also testified that that transfer charge varies in accordance with the variation of the transfer.

By the Court: That is in the contract?

By Mr. McConnell: It is in the contract.

By Mr. Freeman: In the contract, their tariffs, and Mr. Padrick so testified.

By Mr. Thompson: This assertion that it is in the contract, there is nothing in the contract about it.

By Mr. Freeman: But is is undisputed and it is part—

By Mr. Thompson: Nothing is undisputed.

By Mr. Freeman: There is nothing in the contract that indicates that the coupon rate is paid by the railroads or the public. The contract doesn't say anything about it. It merely sets a price, and this is undisputed, your Honor.

By Mr. McConnell: There is no dispute on the evidence.

By Mr. Freeman: Their witness so testified.

By the Court: You say it is in the contract?

By Mr. McConnell: Sure, it is in the contract.

By Mr. Keating: No, it isn't.

By Mr. McConnell: The coupon rate is fixed in the contract.

2125 By Mr. Keating: But the 82 mile situation is not.

By Mr. Meserow: It is not in the contract.

By Mr. McConnell: They have said the coupon rate varies according to whether you are in the 82 miles.

By the Court: I will mark it "Refused." Instruction I refused.

By Mr. McConnell: Instruction J, coupon rates.

By the Court: I can see no objection to it.

By Mr. Meserow: Why comparative?

"Consider the coupon rate proposed by Parmelee and the coupon rate charged by the Railroad Transfer."

Strike out the words "comparative and actual."

By Mr. McConnell: All right.

By Mr. Meserow: Now, your Honor, there were two bids made by Parmelee in their coupon rate, one of May 19, and a subsequent one. The one on May 19 was a much higher one with an accelerating clause than the later one where it was withdrawn.

By Mr. McConnell: That is a question for the jury as to what they were. The evidence is all before the jury.

By Mr. Thompson: Of course, this can have nothing to do with it in the light of the instruction that if the
2126 public pays no part of this, in other words if the railroad pays all of it out of their own funds, and there is no evidence of any increase to the cost to the public, then of course, this is inconsistent with that.

By the Court: That is correct. Refused.

By Mr. Freeman: Wouldn't it be simpler to just direct a verdict, your Honor?

By the Court: Now Instruction K.

"The Court instructs the jury on the question of public injury that you may consider, among other things, comparative services provided by Parmelee."

By Mr. Thompson: We get back to that pickup and delivery of baggage again.

By Mr. McConnell: The question is comparative service of the two companies; what were they doing.

By Mr. Thompson: Interstation transfer is the only issue here.

By the Court: Mark it "Refused."

By Mr. McConnell: How about leaving out pickup and delivery of baggage? Would you give it in connection with interstation transfer of passengers? That is within the issue.

2127 By Mr. Thompson: Put a period after "baggage," and the "pickup and delivery of baggage" is stricken off, and then I think it is what your Honor has said a good many times.

By the Court: Yes, that is all right.

By Mr. Freeman: Isn't services specifically covered by the contract, services of pickup and delivery of baggage specifically in there in several sub-paragraphs of

Paragraph 9? There can be no doubt about it. They are quarreling about the fact of rates being fixed by the contract. This only deals with comparative service.

By the Court: "The Court instructs the jury on the question of public injury you may consider, among other things, comparative services provided by Parmelee and Railroad Transfer in connection with the interstation transfer of passengers and baggage.'

Do you want to correct your copy and give it to me, and I will give it?

By Mr. Freeman: Thank you. We will do so.

By the Court: I will have my girl type it.

The next one is Instruction L. That is refused.

By Mr. McConnell: Exception to the ruling.

2128 By the Court: All right.

Instruction M, definitely refused.

By Mr. McConnell: Exception to the ruling.

By the Court: All right.

Instruction N, refused.

By Mr. McConnell: Exception.

By the Court: Instruction O, that is refused.

By Mr. McConnell: Exception.

By the Court: Instruction P, refused.

By Mr. McConnell: Exception.

By the Court: Instruction Q, refused.

By Mr. McConnell: Exception.

By the Court: Instruction R, refused.

By Mr. McConnell: Exception.

By the Court: Instruction S.

By Mr. Freeman: Your Honor will appreciate this is exactly what you said at the beginning with respect to per se violations of price fixing, which your Honor himself said, in R.

By the Court: It is not here per se.

By Mr. Freeman: You said if there was any agreement to fix prices that you would understand that as a violation of the anti-trust laws. This points out that there are such agreements in this contract.

2129 By the Court: I said what?

By Mr. Freeman: I understood you to say, and the record of course would have to substantiate it, that if there were any price fixing involved in this situation, that would be a per se violation of the anti-trust laws, and there is.

By the Court: I never said that and wouldn't say it and don't agree with it.

By Mr. Freeman: You don't think that that would constitute—

By Mr. McConnell: Just a minute. Exception to the ruling.

By Mr. Thompson: This isn't price fixing, of course, in any sense.

By Mr. McConnell: All right. That is what you say.

By the Court: Instruction S is refused.

By Mr. McConnell: Exception.

By the Court: Instruction T refused.

By Mr. McConnell: Exception.

By Mr. Thompson: We don't have a copy of T.

By Mr. Freeman: We will give you a copy of it.

By Mr. Thompson: Let's see what it is.

By Mr. Freeman: You don't need it. It has been refused.

2130 By the Court: The last one, "U" is refused.

By Mr. McConnell: Exception.

One more thing, the rules say we have to state our exceptions at the time the instructions are given unless we stipulate otherwise.

I am asking the Judge if he can let this show in the

record as our exception to the giving or the refusal at the time?

By the Court: Let the record show it is by order of Court and stipulation of the parties that the exceptions now taken to the instructions both given and refused shall stand as the same exceptions at the conclusion of the Court giving those instructions to the jury without repetition.

By Mr. Thompson: All right.

By Mr. McConnell: May we have a little recess now so I can get my things together to argue this?

By the Court: Yes.

By Mr. Thompson: We will keep on going until 1:00 o'clock or so?

By the Court: Yes, we will keep on going.

By Mr. Thompson: Until they get through with their opening, if they can?

By the Court: All right.

2131 (Whereupon a short recess was taken, after which the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By Mr. Thompson: I just have one thing to say on one of these instructions.

By the Court: All right.

By Mr. Thompson: Of course, this came quickly and I only had a chance to look at it when it first came in here. This is Instruction "K" that was offered by the plaintiff:

> "The Court instructs the jury that on the question of public injury you may consider, among other things, the comparative services provided by Parmelee and the Railroad Transfer Service, Inc. in connection with interstation transfer of passengers and baggage and the pickup and delivery of baggage."

By the Court: I changed that, and I gave you a corrected copy.

By Mr. Thompson: That is what I am bothered about. I am inclined to think it ought to be the way they offered it, because this has nothing to do with charges or
2132 anything. It is comparative services, and I would feel happier, I think, if "K" was given as it was offered.

By the Court: Give me the original and withdraw your objection, and destroy, please, the copy that I gave you.

By Mr. Thompson: Very well, your Honor.

By Mr. Freeman: Your Honor has a copy?

By the Court: I have it, and if you will give me a second I will have the original rewritten.

By Mr. Thompson: Just the way it was, your Honor.

By the Court: Very well.

The Proposed Instructions Tendered By The Parties And Which Were Refused By The Court Are As Follows:

2133 (1)

"Before you were accepted and sworn to act as jurors in this case, you were examined by both plaintiff and defendants as to your competency and qualifications. Your answers showed you were competent and qualified to act as jurors in this case and the parties to this case accepted you as jurors on the faith of your answers. The answers you then made to questions in regard to your competency, qualifications, fairness, lack of prejudice and freedom from passion and sympathy are as binding on you now as they were then, and should so remain until you are finally discharged from further consideration of the case. It would be improper for you to disregard those answers that rendered you competent jurors. *(Refused)*

2134 (d)

The Court instructs you that if you believe a witness has testified falsely as to a material issue of fact, you are free to disregard any and all of the testimony of such witness. *(Refused)*

2135 (e)

The Courts instructs the jury that plaintiff need not prove its case beyond a reasonable doubt, but only by a preponderance of the evidence. *(Refused)*

2136 (f)

You are also instructed that the plaintiff must establish its case by a preponderance of the evidence. This preponderance, however, is not necessarily determined by the number of witnesses testifying to a particular fact or state of facts. *(Refused)*

2137 (b)

The Court instructs the jury that on the question of public injury you may consider, among other things, the comparative services and rate of charge therefor performed by Parmelee and Railroad Transfer Service, Inc., in connection with the pickup and delivery of checked baggage. *(Refused)*

2138 (i)

The Court instructs the jury that on the question of public injury you may consider, among other things, the coupon rate charged passengers using transfer service between terminals in Chicago whose trip terminates within an 82-mile radius of Chicago. *(Refused)*

2139

(j)

The Court instructs the jury that on the question of public injury you may consider the coupon rates proposed by Parmelee in its bids and the coupon rates charged by Railroad Transfer Service. (*Refused*)

2140

(l)

The Court instructs the jury that the "public" includes not only railway passengers using the transfer service, but the public at large, including members of the public holding stock in the 21 railroads comprising the Chicago Terminal Lines group. (*Refused*)

2141

(m)

The Court instructs the jury that a combination, conspiracy or agreement to eliminate a competitor equipped to compete from a business involving a substantial segment of interstate commerce is an illegal restraint of trade and is of itself injurious to the public interest. (*Refused*)

2142

(n)

The Court instructs the jury that if you find that the contemplated purpose, tendency or inherent nature of the award of the transfer business to Railroad Transfer Service, Inc., was injurious to the public, you need not find actual public injury. (*Refused*)

2143

(o)

The Court instructs the jury that in determining whether public injury occurred, the jury may consider the fact that the contract with Railroad Transfer Service, Inc. precluded competition for the transfer business for a period of five years. (*Refused*)

2144 (p)

The Court instructs the jury that it is no defense to the issue of public injury that for business reasons it was necessary or advantageous for Railroad Transfer Service, Inc. to have a five-year exclusive contract with the railroads. (*Refused*)

2145 (q)

The Court instructs the jury that any asserted economic advantage to any of the defendants in having a transfer contract for a period of five years should be disregarded in your determination as to whether public injury occurred. (*Refused*)

2146 (r)

The Court instructs the jury that if you find that there was an agreement between the defendant railroads and defendant Railroad Transfer Service, Inc. as to the amount of charge to be made to railroad passengers for transporting hand baggage to parcel rooms of railroad terminals in Chicago and for transporting remains between terminals, then such agreement would as a matter of law constitute injury to the public. (*Refused*)

2147 (s)

The Court instructs the jury that if you find that there was an agreement between the defendant railroads and defendant Railroad Transfer Service, Inc. as to the amount of charge to be made for transporting hand baggage to parcel rooms of railroad terminals and for transporting remains between terminals, it makes no difference whether such rates of charge are reasonable or unreasonable since such agreement is unlawful by itself and constitutes injury to the public. (*Refused*)

2148 (t)

The Court instructs the jury that if you find that there was an agreement between the defendant railroads and defendant Railroad Transfer Service, Inc. as to the amount of charge to be made for the pick-up and delivery of baggage, such agreement would as a matter of law constitute injury to the public. (*Refused*)

2149 (u)

The Court instructs the jury that any attempt to fix prices or rates of charge in connection with the interstation transfer of baggage and pick-up and delivery of baggage is unlawful and constitutes injury to the public, and it makes no difference whether the fixed prices are minimum or maximum prices, or reasonable or unreasonable. (*Refused*)

2150 (Whereupon a short recess was taken, after which the following further proceedings were had herein, in the presence and hearing of the jury:)

By the Court: All right, bring out the jury.
Good morning, ladies and gentlemen.
All right, Mr. McConnell.

And thereupon Mr. Thomas C. McConnell Addressed The Court And Jury In Argument On Behalf Of The Plaintiff As Follows:

By Mr. McConnell: May it please the Court, opposing counsel and ladies and gentlemen of the jury: It is now my province to address you on the issue which is being submitted to you by the Court. This has been sort of a difficult situation for you people, as I realize.

You spent a lot of your time in the other room, and I hope that you will bear with us all. We have tried to do the best we can under the circumstances.

If there is anything I have done or anything I have said in the course of the proceedings which aggravated you in any way, take it out on somebody else—me—
2151 but not my client, please, and I think I speak for counsel on the other side, that I think we all appreciate the courteous attention and courteous hearing you have given us.

I said, when I started this case, that it was difficult for me to make an opening statement. If it was difficult then, it is doubly difficult now to address you on the issue here without any background for you of what the case is about.

I think I can say this, that I have brought—I didn't bring it, but I am employed by the plaintiff in this case, and the suit was brought under Sections 1 and 2 of the Sherman Act and the concomitant sections of the Clayton Act under the anti-trust laws, and while you people are only hearing a portion of the case, it is still an anti-trust law, and it always will be, and it may become a very historic case before we get through with it.

I can't minimize or undertake the importance of the issue that is before you people. I am not exactly a novice in this anti-trust litigation or in the trial of lawsuits, and my opponent has been at it ten years longer than I, and we have been around here too long, probably, but I
2152 can't recall, and I certainly don't think that any jury is going to sit on a case with more public interest, more over-all interest and more historic interest before we get through with it than this one.

These anti-trust laws have been on the books seventy years, and they were enacted by Congress, and I say this in no critical way at all, just as a statement of fact, that this, as far as I know, and I think I am as well familiar with this practice of the law as anyone, that as far as I

know an issue of this kind has never been submitted to a jury before in an anti-trust case with the limitations which are imposed here.

2153 That is neither here nor there, and I want to get to the issue which is before you.

I make those preliminary remarks simply because I feel we have a case of great public moment, of great public significance, and of very serious import in the administration of justice in the courts of this land.

I asked for a jury trial because I believe in juries and believe in the ability of juries to get at the facts, and we demanded a jury trial, and the Court will instruct you at the end of the case that you are the sole triers of the facts in this case.

The judge is paramount in his rulings of the law, and you will be instructed to take your instructions on the law from him, but within the province of the facts of what is before you, this jury and all American juries are supreme. It is to the glory of our law that that is so.

The issue here, as it has been defined and will be defined in the instructions, is quite narrow. As you will recall the direct examination of my witnesses in my case was confined to that narrow issue, and then we came to the

2154 defense in this case, and much to my surprise and the surprise of my colleagues, the defense that was prosented was the defense to the conspiracy issues in this case, so that you are in the unique position here of having heard none of the plaintiff's issue on the conspiracy issue but having heard the defense to those issues.

I sat quietly here and didn't say anything, because I have taken the position that those issues were properly before you, and there was no objection made, and the evidence went in, but the evidence is now in, and I have a right to discuss it with you, not on the issue of conspiracy,

but on the issue of the credibility of those witnesses of whether or not what they were telling you was the truth or whether or not the defense which was presented here was a false defense.

2155 If it was a false defense, which I contended that it was, something created after the event, as an afterthought, that goes to the credibility of all of those witnesses on the issue which is here before you this morning.

I want to go back to the beginning of this thing. We have a situation here where the Parmelee company, an institution here in Chicago, known all over the world, a million and a half people went through this location year after year after year, traveling from one station to the other, and using the Parmelee services. It takes no great flight of the imagination to see that that was an institution, built and created over years and years and years of service, which the railroads, and every document in this record, have said was highly satisfactory and the performance pleasing to them in every respect material in this case.

I am going to get to that evidence and read those documents again. Some of them you have heard.

Talk about it being poor service, I say, is an afterthought; not a position taken at the time when these discussions were going on. Something created, some-

2156 thing built up, something which is contradicted by all the evidence in this case.

I want to state their position at the outset, and then we will attack it with the documents and the evidence which you have heard.

An effort was made here before you people to show that this contract was taken away from the Parmelee people for some business reason. There were four things stated. Perhaps the best way to recall it to your mind is

to recall to your mind Mr. Whittington on the witness stand, the belligerent gentleman from the Baltimore and Ohio Railroad, the man who did all the talking, they said, in the May 19th meeting.

Mr. Whittington stated the defense to the conspiracy charges in this case:

No. 1, the reason they changed from Parmelee was because they couldn't get a profit and loss statement. There was no obligation on our client to ever give one. Every witness agreed to that. There was no contractual agreement about it at all, but they couldn't get it, so that was No. 1.

No. 2, labor difficulties. It had a strike back in 1950, and they were threatened with a strike in subsequent years. That was the second thing.

No. 3, air conditioning equipment.

2157 No. 4, he thought that there would be a better continuity of service over the years, when the evidence is that we were never given anything in the way of a contract in the whole time that we were there except on the basis of what Mr. Padrick said from the witness stand, he said what you might even call a day to day basis.

Those contentions were made by Mr. Whittington from the witness stand here in this court. But you people will recall that he was brought into this, brought into this discussion after Mr. Nelson of the Baltimore and Ohio Railroad had taken the position that there was not enough difference between bids to justify taking this business away from the Parmelee company.

There were other letters written which I am going to advert to in the course of my argument, but I am stating this at the outset to get the real issue before you as to the credibility of these witnesses.

When Mr. Whittington was commissioned by his superiors to bring Mr. Simpson, the president of the Baltimore and Ohio, up to date on what the status of the negotiations were, and I asked him on the witness
2158 stand, "You were to bring before him everything material to this case?" and he said, "Yes." When he wrote his report, which I am going to advert to and read portions of in my argument, he didn't make one single reference to any of these things which he now says were determinative in taking this contract away—

By the Court: May I interrupt you one second, please? I have a long distance call.

By Mr. McConnell: Could I finish the sentence?

What I was going to finish with was determinative in taking this contract away from the Parmelee company and giving it to the Keeshin company.

By the Court: Thank you very much. Go ahead.

2159 By Mr. McConnell: I want to read from Plaintiff's Exhibit 7, which was a memorandum under date of February 15, 1955, from J. L. Sloan to Mr. R. T. Anderson of the Santa Fe Railroad. Reading the first paragraph of that letter:

> "At meeting of Chicago Terminal Lines February 1st report of committee studying transfer arrangements at Chicago was submitted. Chicago Terminal Lines were advised that we had received one bid for transfer of passengers and baggage from Keeshin at approximately the same rate Parmelee is now charging, and one bid for transfer of baggage only. Chairman Padrick advised the lines present that it was the view of the committee studying the transfer arrangements that a change in operators should not be considered unless, say, a bid of $1.10 or $1.00, including baggage, was submitted by some transfer company."

Now I asked Padrick if that was the view of the committee, and he said they were all there when he made the recommendation and nobody objected, nobody said
2160 anything to the contrary, and I could assume that they did agree.

They were trying to get a lower rate on this coupon, and that is all they were trying to do. There isn't the slightest question about it on the evidence in this case that they met together in July, I believe it was, of 1954, to get some competitors to keep the Parmelee coupon rate down.

You will recall that I went through these rate increases, and so far as this record shows in 102 years, Parmelee had three rate increases, and everybody that took the witness stand that was examined on it admitted that the cost of doing business and the price of labor and the price of everything has been going up; and the rate increases were trivial compared with the problem that was faced.

I asked all these witnesses whether all these people, and they contacted some eight, nine or ten of them, who could possibly do this same job, whether or not they ever got a lower rate, and they didn't get a lower rate from any single one of them except the Willett Company. The Willett Company, apparently, according to some of the
2161 correspondence here, misunderstood what they were doing and withdrew their bid.

Keeshin's bid wasn't any lower at any time, and his bid never varied from the time it was submitted December 15 down to the end of the matter, except for some changes in putting ceilings on, and some of the escalator charges in his rate, which was based on a one-cent increase in coupon for every five-cent increase in wages.

It was a rate negotiation with competition brought in. There is no question about our having competitors. Here

they went out and got ten of them to submit different bids.

Here is the committee, the men the railroads picked out with knowledge of this thing, saying, after they had Keeshin's bid, even before we put in a bid, taking our old scale, that unless there was a reduction in the coupon rate to $1.00 or $1.10 there was no point in making a change.

Why would they make such a recommendation? Men familiar with the industry; men familiar with what was going on; men familiar with the nature of the transfer business.

They didn't want to injure the public. Why? Be-
2162 cause the public was their customers. Unless they could get a substantial decrease in the rate, they didn't want to disturb relationships, which I am going to point out and show to you, they said time and time again were satisfactory.

They knew, just like any ordinary intelligent person must know, that to disturb an operation that had been in existence that long had to result in difficulties, in injury to the traveling public. It was inherent. It had to result. It couldn't be otherwise.

All right, Mr. Whittington had to admit that there wasn't one single, solitary one of the things that he said he had in his mind later on in the negotiations which was submitted to Mr. Simpson, who was going to make the decision. All these important things. Why weren't they?

There is only one possible explanation, because at that time they were not controlling factors, and they were not being considered seriously, and they were not the things which were determining why this business should go from one company to another. It wasn't that. It was something else. When they try to tell us it is this, why give a
2163 phony reason? Why? Because they can't give the real reason, that is why. That is this whole lawsuit.

That is their defense to a conspiracy case: Afterthought, dreamed up, not supported by the evidence.

2164 Now when you get at issues of truth, you look to see whether the things which are being said to you people are corroborated by the physical facts, corroborated by the things that are said, not later in a lawsuit where you are trying to sustain a position, not later when you are trying to cover up a position or deny a fact.

What do you say at the time? What were they talking about at the time?

They were talking about getting a lower rate, and that is all they were talking about, provided the service was comparable. The committee working on the problem did not feel that the change should be made in contractor "unless there is a substantial reduction in the price."

That is the letter from Anderson to Duffy, Plaintiff's Exhibit 6, under date of January 7, 1955.

These men were dealing with it then as a railroad problem, as a business problem, and using their best brains and ability on it. Somebody later changed it as a matter of policy, and I will get to that.

I read to you from a letter from Anderson to Duffy of the Atchison, Topeka, Santa Fe Railroad under

2165 date of January 7, 1955. At that time—well, I will read it to you:

"A committee consisting of the line in each terminal paying largest amount to Parmelee was appointed to contact other transfer companies in Chicago capable of performing the operation to ascertain if a lower price could be secured for transferring passengers and baggage between stations in Chicago. A memorandum was prepared outlining the transfer problem and presented to each of the companies contacted, and an interview was arranged with the companies interested to answer their questions and progress the matter.

"We have received a bid from Mr. J. L. Keeshin for transfer of passengers and baggage at a charge of $1.20 per coupon with an escalator clause, and the bid also includes proposal that station forces load and unload trailers, which would be unloading with our own men and would be an additional expense for the carriers.

"A bid was received from the Landon Company
2166 for the transfer of checked baggage only. The Railway Express Agency advised that they would only be interested in the handling of baggage, and this they would do on a 15 per cent plus basis."

And after that, they said:

"The committee working on the problem did not feel that a change should be made in the contractor unless there is a substantial reduction in price."

Keeshin's price was $1.20, two cents under the then prevailing Parmelee price. As you recall, Parmelee came down in their price to meet this price of $1.20, then there were increased stages, and then there was an absolute ceiling put on the Parmelee proposal of $1.25.

There was no such ceiling put on the Keeshin proposal, and it ended up that they paid, and they paid, $1.27 during the last year to the Keeshin company, two cents more than could ever be charged by Parmelee under their proposal.

That is the negotiation that had to do with getting a new carrier at a lower rate, and they are trying to tell
you people that the reason that change was made
2167 was just an ordinary business reason.

Do you remember Gurley on the witness stand? Gurley testified to those same four things. Those were the things. Then he didn't know the rates. He didn't know the proposals. Somebody had written it up for him.

He finally remembered that his own organization, Mr. Sloan of his own organization, had recommended after the May 19th meeting that they continue with Parmelee. His own organization, his own memorandums, everything he had before him contradicted him. He couldn't find anywhere any of the things he was mentioning—not a one of them. Not a one of them.

What is an afterthought? It is something thought up; it is something dreamed up to cover a situation after the event.

It isn't found anywhere in these papers. It isn't found anywhere in these records. It isn't found anywhere in the conversations even.

Every railroad that we had, that they put witnesses on, their witnesses just completely collapsed on that issue. They had to. They couldn't do anything else. It wasn't a fact.

2168 You can't fabricate evidence of that kind and make it stand up in a court over cross examination. You can't do it. It just can't be done, and it wasn't done in this case to satisfy you, I am sure.

I am coming back to some of these admissions that were made on that situation.

Mr. Padrick sat in on all the committee meetings, chairman of the twenty-one railroads which constituted the Terminal Lines. He was the chief negotiator. He was the man who knew everything about this situation. He was present.

You will recall he tried to tell us of the May 19th meeting. The concensus of opinion at the May 19th meeting was that they should give this business to Keeshin with no qualifications about it.

There was nothing doubtful about his testimony. He said it.

Mr. Whittington, who was there, who is also their witness, he gets on the stand, and he gets there, and there was nothing that even remotely resembled a consensus of opinion.

There was no vote, no discussion of how they were going to vote, and there was complete conflict be-
2169 tween those witnesses on a very material point, most material because he was trying to tell you that it was settled there as a business matter on May 19th, and then we confronted him with the letters of three members of that committee of six where they had written their people saying that they were going to recommend Parmelee.

They said it in writing, so they didn't agree at the May 19th meeting on any business reasons to give this to Keeshin and take it away from Parmelee. They didn't. They couldn't have in the face of that correspondence written at the time, as it couldn't have happened and it didn't happen.

Witnesses get on here to testify to a story like that intended to cover like a blanket why they took his away. Why did they bring a story like that into court? It can't be corroborated. It is rebutted by the record of the times.

Gurley said, and I am quoting from transcript Page 456, that he said—when the final roundup came, to vote for Keeshin as a matter of policy.

What in the world kind of policy could be involved in this situation if it was a business proposition? Where is the policy?

2170 There is another element that is in it, which we have gone into, that does involve policy, but not the difference in coupon rate. Where is the policy in that?

Here is a railroad president of an important railroad coming in here with a story of that kind, which you know

can't be true if you analyze this testimony and analyze what the background of it was and what the situation was. It just can't be true.

2171 Why is that important? Why is it to so vital and important on the issue that is before you? Because in this whole matter of equipment and service, and so forth, that their testimony on that is an afterthought to explain why and to avoid the real reason for the transfer of this business from one company to another, if it is all a fabrication you can disregard all this testimony.

I am going to show it doesn't amount to anything anyway, but as to what it does amount to, I would say, and say most respectfully, that you can disregard it all.

I asked Mr. Gurley about the proposals, and he said, "I didn't have the dollar and cent graduated scale coupons in mind when I was dealing with it."

He was making the decision and didn't even have them in mind, and here we have them in mind, and here we have all this big committee formed with the proposals, and somebody said, "cricket", that it wasn't "cricket." That is an English expression, and I think it means fair play, and I don't think you are getting much fair play if the person who is deciding it is deciding it as a matter of policy and doesn't even know what the rates are.

2172 Maybe that is some explanation of what is the matter with the railroads. Here is a railroad president telling you he is deciding it without even knowing what the rates are, who doesn't even care. He didn't know the coupon rate.

Here is what his own people had told him, and he didn't care about this, and I am quoting:

> "We believe that the proposal submitted by Mr. Markin is superior to the proposal submitted by Mr. Keeshin because we have assurances of a maximum coupon rate in the fourth and fifth years and, in addi-

tion, we will avoid the possibility of labor trouble in connection with the operation by a new company with a different union."

How about that for a switch?

Here is their own organization who had lived with Parmelee for years and years and years, and who wanted to keep the contract because they have satisfactory labor relations now, and they don't know whether they are going to have them with a new union.

That is the recommendation, and this man Gurley says the labor situation, possibly a better labor situation
2173 with Keeshin was one of the things in his mind, not in any memorandum, not in any suggestion.

There is no showing he knew one solitary single thing about it until he got here to testify in this case.

What was the labor situation? Parmelee had an A.F. of L. union, and they had a Brotherhood Railway union, and Keeshin had an outlaw union.

He had an independent union. That is what they are talking about as a possibility of labor trouble.

When an independent union comes in and takes over and takes the people that were there, and in the union, of course, the union is going to object. Why wouldn't they object?

That possibility was certainly in anybody's mind who knew the situation.

We have in this case what I find in all of these kinds of cases where you have big corporations.

2174 You have the fellow down at the bottom who knows all about the business and knows why things should be done and makes recommendations, and you have a fellow up at the top that doesn't know anything about it at all, and on some policy basis he makes a decision, but I have never seen it proved like this before, where

a president comes right out and says, "I got all these recommendations in favor of Parmelee, and I don't even know what the rates are, and I don't know this or that about it. I just didn't know anything about it, but I decided, as a matter of policy, we would give it to Keeshin."

If you can believe that—he did it as a matter of policy, all right.

I cross-examined Nelson on how the contract was working, Nelson of the Baltimore and Ohio, and he testified in the transcript at Page 713 that it was his opinion that the Keeshin proposal was not sufficient, a not-sufficient decrease from the present rate to warrant any change from Parmelee.

That was before Parmelee had even put in a bid. That was when Parmelee had $1.22, and then he further testified as follows:

"Q. Is it true that the Baltimore and Ohio at
2175 present is actually paying Keeshin $1.27 for the transfer service?

"A. It is.

"Q. And that last year you paid Keeshin $1.25 for the transfer service?

"A. That is right

"Q. And in both instances those rates were in excess of the maximum ceilings in the Parmelee proposal for the two years involved, is that right?

"A. I believe so."

Getting back to Mr. Whittington, he was the hatchet man at the May 19 meeting. He was the fellow telling them what was what and telling them this and that and the other things.

Coleman, his associate and his assistant, writes him to bring him up to date so he would know what is going

on, and he writes him under date of January 7, 1955, Plaintiff's Exhibit No. 34, which is in evidence as follows:

"As previously informed you, the Chicago Terminal Lines only last year appointed a subcommittee to make a survey of the Chicago transfer situation,
2176 particularly from an economic rather than a service standpoint, as the latter has been satisfactory in its handling by the Parmelee Transportation Company."

That is the Baltimore and Ohio. That is the fellow we had in here the other day working part time inside the station and the rest of the time two or three blocks away out in the yards telling us all about what was going on back there in 1955. That is the Baltimore and Ohio. "The service was satisfactory," they said, and they ought to know. They had been dealing with it long enough.

They had had enough time to find out about complaints or anything else, and speaking of complaints over a period of 102 years of service we had eight or nine complaints produced here for your edification.

We have dealt with the Baltimore and Ohio, and Mr. Whittington takes things in his own hands over Coleman's recommendation, over Nelson's recommendation.
2177 He is instructed by Mr. Simpson, and in the advice to Mr. Simpson there was not a single word, as I say, about any of these things he is talking about now, but Mr. Simpson made the decision, apparently, and Mr. Whittington goes on and appears at that May 19 meeting.

He never appeared at meetings before. Some policy decision had come up which required the higher echelon people at the meeting, apparently.

We have talked about the Santa Fe. Those two railroads were on this committee, and their people had written recommending that they vote for Parmelee, and the

other western railroad was the Illinois Central. They changed and switched their vote.

Every single document in this case, and I challenge counsel to find a one in the entire course of these negotiations which doesn't say specifically, unequivocally in language no one can misunderstand that there was nothing wrong with the Parmelee service, with their equipment, with their service, with what they were doing for the railroads.

The trouble was that the Parmelee company was making requests for rate increases in the face of higher
2178 costs all along the line.

In that connection I want to call your attention back to what I think is very significant. The Railway Express Agency, which is an agency owned by these railroads themselves, was contacted to see whether they could do better on the rate. No, and the only way they would touch the business was on a cost plus 15 per cent basis, a guaranteed profit of 15 per cent, and somebody here on the witness stand was complaining about Parmelee because they wanted to figure their rates on a 10 per cent on their invested capital basis, and this man, their own agency, wanted 15 per cent profit.

2179 They wouldn't take the business.

I want to refer to something else here. There were differences in service. There were admitted differences in the service. There were differences in service that nobody can deny and nobody has denied. We have all this big buildup about air conditioning. Let me advert to that for a moment.

We put a witness on the stand who went out and checked the air conditioning on the Keeshin vehicles during hot weather, for two years. He made notes, made a record. He came in here and testified about it. He said the windows were open.

I asked their witnesses if the air conditioning was working, if the windows had to be closed, and they said yes. This witness checked and found the windows open on the hot days during the summer. It only means one thing. The air conditioning wasn't working.

Did you ever hear any denial of that? Did anybody deny it? I never heard any witness get on the stand and deny it.

All you can get from that is that all during the hot weather, the windows were open, which means that the air conditioning wasn't working. That is a big thing, 2180 great big thing, all blown up here to account for all sorts of things, the transfer of a contract from a person that had it for 102 years on the basis of air conditioning they don't use, according to this record.

We showed you that they had delays. Of course, they had delays. You can't operate a business like this without troubles and delays. But here is a railroad saying over 102 years, whatever they did, that their services were satisfactory and there were no issues on that in the controversies back and forth over who was to get this business.

I have shown you the rate was higher. That is no change, no reason to change. They were going to pay more money to Keeshin.

He had never been in the business before. Never been in it. He never had any experience in it. Absolutely a brand new thing for him, and they were going to experiment with the public on it, and cut out one for the other. Obviously not for the reason you have heard in this courtroom.

When I see witnesses of the caliber of the higher echelon like Mr. Gurley, who come here with a story

like that, and then underlings come in who have
2181 been interviewed by their superiors as to testimony, how much credence are you going to give to that in this courtroom?

That is the issue here in this case, credibility. Credibility—that is the issue before you on this situation.

Is this a good place to break, your Honor?

By the Court: Ten minutes.

(Thereupon the following proceedings were had out of the presence and hearing of the jury:)

By the Court: It has been suggested that we might go out to lunch now and then resume and go straight through.

By Mr. Thompson: No. That makes the whole afternoon and wears them dead. Let's finish the first argument, and then go to lunch. I am certainly opposed to having a five-hour run.

By the Court: All right. We will go on until one o'clock, then.

(Thereupon a short recess was had.)

By the Court: All right. Bring out the jury.

2182 (Whereupon in the presence and hearing of the jury the following proceedings were had:)

By Mr. McConnell: If the Court please, ladies and gentlemen of the jury, I want to read to you this letter of May 23, 1955, which is in evidence here as Plaintiff's Exhibit 9, because it deals with a number of points which have been at issue in this case and settles them, it seems to me.

This is a memorandum from R. T. Anderson to Mr. Duffy of the Santa Fe Railroad. He says:

"Supplementing our memorandum of March 18 and previous advices about progress of committee of Chicago Terminal Lines studying the transfer of passengers and baggage in Chicago, the committee met Thursday morning with Mr. J. L. Keeshin and Thursday afternoon with Mr. M. Markin to review their proposals.

"We understand that Mr. Keeshin has appealed to the executives of the B&O, Pennsylvania, C&NW, and possibly other lines for favorable consideration of his bid."

2183 Now think about that for a moment. We have got a committee here, and it is composed of six railroads, and the six railroads put representatives on the committee, and after the May 19 meeting, the meeting at which Mr. Padrick says the concensus was that everybody was in favor of Keeshin, Keeshin appealed to the presidents of the railroads whose representatives were on that committee. The B&O, the Pennsylvania, and the Chicago and North Western—three of the railroads that are on that committee. He goes outside the committee, over the heads of the committee, and appeals to the presidents of the railroads.

Cricket. Good old English game of cricket.

"Mr. Keeshin passed a statement around at the meeting showing the amount of freight revenue billed through the truck rail terminal in Chicago which he operates. The Pennsylvania received the largest revenue, over a million dollars. Other carriers in eastern territory and carriers operating between Chicago and St. Paul received large amounts. The Santa Fe re-

2184 ceived approximately $3,000 revenue."

I am a good customer of yours; I am giving you business in freight. That is what he wants considered in

this committee when the proposal was whether or not the railroads should get a lower rate.

2185 "Cricket."

He goes on as follows:

"Mr. Keeshin proposes to furnish air conditioned, radio-phone-controlled passenger station wagons supplemented with some large equipment for the transfer of passengers and 20-foot trailers on a two an hour dispatch for the transfer of baggage. Coupon rate for the transfer of passengers and baggage will be $1.20 for the first year, $1.22 for the second year, $1.23 for the third year, the coupon rate for the fourth and fifth years to be increased one cent for each three cents of wage increase. If Mr. Keeshin is a successful bidder, the drivers would come under a different union and would have to pass a physical examination. Mr. Keeshin is positive there will be no union difficulties. We have operated with Parmelee without a contract."

Can you remember any discussion here of whether there was or there wasn't a contract? It is a big issue on that.

2186 "We have operated with Parmelee with a contract."

This is the man writing about it who knows about it, a defendant in the lawsuit.

". . . but it is felt in view of expense to be incurred in acquiring new equipment, the operation should be covered by contract after expiration of present letter agreement of June 30, 1955. Mr. Markin now submits a proposal of $1.20 for transfer of an increase of one cent in the coupon rate for each three cents of wage increase, with a maximum of five passengers and baggage effective July 1, 1955 with

cents' increase over the five-year contract and a maximum coupon rate in each year as follows: July 1, 1956, $1.22—July 1, 1957, $1.23—July 1, 1958, $1.24—July 1, 1959 through June 30, 1960, $1.25. Mr. Markin states he will spend $500,000 in the next 18 or 24 months if he is successful bidder to replace trucks with a new type of vehicle and to add 30 new 12-passenger limousines to his present fleet of 20
2187 which will enable the retirement of the older 7-passenger limousines. The other Parmelee service will be continued unchanged, baggage and transfer being handled on a two a day basis, which has been satisfactory."

You remember all of this talk about two and four time transfer? Here is their own man who says, "Two a day is satisfactory."

He says Markin is going to spend $500,000, and that was in the contract. That was in the proposed contract.

2188 I took their witness Bayr over all the equipment they had out there, all this new equipment that came in, this great big buildup about the equipment, and I had him—he bought it, and he knew what the prices were. He gave that, and what do you think it totaled? It was $166,000.

Markin was going, was contracting to spend $500,000. It isn't a comparison between what Parmelee had before these offers came in. It is a comparison between what Parmelee was proposing to do and what Keeshin did, and it is a comparison between $166,000 of equipment with $500,000 of equipment, plus the cost of the trailers, which I didn't get from him, and which they had used and probably depreciated down to zero.

There is something that anybody can put down on paper and compare. Five hundred thousand dollars of equipment against $166,000.

The equipment has something to do with it. It isn't the old equipment at the time you are talking about that they have a picture in evidence here taken on some dark Sunday with no traffic or anything else, where it looked like it had just come out of the Ark, and you will look at that picture you will see the taxicab and compare
2189 that with all their trucks in their garage and it would look pretty bad, but that is comparing apples and pears.

That isn't what we are comparing, and I don't concede the taxicab, what they call the taxicab, was that bad either. They thought it was satisfactory all during the years, and they were trying to please the public, at least they tell you they were—I mean the railroads.

We were proposing to put $500,000 in there. Here is a man who has been in the railroad business all of his life, and his president said he was competent and that he was a good man. Continuing:

> "There will be a final meeting of the committee on June 3rd to submit our recommendation to all Chicago Terminal Lines. We propose to recommend the continuance of our arrangement with Parmelee because of our long association with that company and its satisfactory transfer of our passengers and baggage between terminals. We believe that the proposal submitted by Mr. Markin is superior to the proposal
2190 submitted by Mr. Keeshin."

I am not saying that. They are saying that. The witness of their company says it, and it is their document out of their records. It is not me, but they are saying it.

Everything I have gotten in this lawsuit down to date I have had to claw out of these people on cross examination, words out of their own mouths all the way through here.

I am not talking about witnesses we put on. I am talking about their evidence and their witnesses and their documents.

We are on the outside looking in here, and we have to do the best we can in trying to break through what has been set up here as a veil over the true facts in the situation, and we have had to fight and fight and fight to get them.

2191 We have them, and they come right out from their own documents, and they say on May 19 that this is a superior proposal, and I asked these witnesses, and I think I asked them all, "Did anything in the way of a proposal happen after the May 19 meeting?"

The only thing that happened was something which improved the Parmelee bid. This is written on the May 19 meeting. It is perfectly obvious from this that on the merits, on the people who knew, on the personnel who were dealing first hand with the problem, on the operating level, who could see and had seen the operation, that they were satisfied with Parmelee.

They had gotten their lower rate, and they were satisfied, and they were recommending that they continue. On the merits we had won on May 19.

We have given you other recommendations, and they have been read into evidence. There is the Baltimore and Ohio, the Santa Fe, and Mr. Padrick's admissions all the way through representing all the railroads in his original call, in his progress report, and he said it was confined to an economic situation, nothing else, because even without spending $500,000 for new equipment Parmelee's

2192 service was satisfactory to all the railroads, 21 of them coming in here.

They didn't call a meeting to see if they could get somebody to do the service better. They didn't call a meeting

to see whether they could get a different labor arrangement, not at all.

It wasn't even considered and never was it there at all until this question of policy got involved in it, and that is the issue we can't try.

He said:

> "We believe the proposal submitted by Mr. Markin is superior to the proposal submitted by Mr. Keeshin, because we have assurance of a maximum coupon rate in the fourth and fifth years."

They had the assurance of no higher rate than $1.25, and Keeshin didn't have the assurance, and it went to $1.27, so he was right.

> "In addition, we will avoid the possibility of labor trouble in connection with the operation by a new company with a different union."

Now I come to that labor situation, and right at this time while the thing was under consideration, more of this cricket game, and my friend on the other side
2193 of the table, Mr. Meserow, told you on the witness stand that he didn't represent Keeshin, and he told you under oath that he didn't, and I read to you Mr. Keeshin's deposition where he said he had represented him from the end of 1954 or the early part of 1955, and this is up and around June of 1955.

By Mr. Meserow: We also said, "I don't remember." Don't accuse me of making any false statements here, Mr. McConnell, and I am objecting to it.

2194 By Mr. McConnell: Whether you made false statements is a matter for this jury, and it is within its province, and I read the transcript.

By Mr. Meserow: I have practiced law as long as you here, and I took an oath here.

By Mr. Thompson: Come off it.

By Mr. Meserow: I will not come off it.

By Mr. McConnell: I heard the oath, and I am talking about it, and I am talking about the transcript you read in evidence to this jury.

By Mr. Meserow: You had to stoop to call me as your witness because you don't have any.

By the Court: Mr. Meserow; please.

By the Marshal: Let's have order.

By Mr. McConnell: You heard the testimony. Three labor men now working for Keeshin, and no labor union made any objection to wage scales. There was no labor trouble with the union which represented these men which we have to, by law, deal with, but right in the middle of it Mr. Meserow doesn't write us, but he writes the members—he writes the railroads who have representative members on the committee dealing with this transfer problem, telling them about labor troubles at a time
2195 when he is representing Mr. Keeshin, who is trying to get the contract.

You judge that question of fact as against my brother here who gets up and so vociferously protests. That is within your province. That is cricket. That is the way to do it.

Was this transfer made on merit? If it wasn't, any probative value of the transfer from one company to another disappears. If it wasn't made on merit, all of this talk and all of this buildup and all of this edifice that has been created here falls, and with it falls the credibility of this defense and the credibility of these railroads in this situation, and I say to you people you have never had an issue like this, and you probably will never have an issue like it again, and it is worthy of every possible consideration you can give it, prayerful consideration if necessary, to come to the right result, because the result in this case is going to determine a lot

of things which aren't obvious to you or apparent on the face of this lawsuit.

I say the labor thing wasn't even straight, and I say it to Mr. Meserow and his client and the railroads.

2196 Let's get to something else. We had a contract in this case, and there isn't any dispute about it, which was executed by the Keeshin Company. We had some agreements as to how we were going to operate, and the witness Padrick said they could terminate it overnight, that it was day by day and hour by hour.

I tried to get a concession that it was year to year, and he was going way beyond me. We just had nothing, and then they were quarreling because we didn't have long-term labor relations.

How in the world could we have them? How in the world could we sit down and make a six-year deal with a labor union, or a three-year deal with a labor union when we didn't know if we would have the business from day to day?

The fact they could take it away from us is that they did take it away from us. They were complaining, he said, but they weren't complaining before, and it isn't an honest complaint because they knew the situation, but they dreamed it up later on that they were going to complain about something to justify what they did, so they complained because we don't have more than a year

2197 to year labor contract, and we had to come to them and renegotiate the ticket rate when our labor costs go up.

2198 Well, we are squeezed with the labor costs. It is just one of the facts of life, and they knew it, and we knew it. But it just happened to suit their purposes to use that here now.

As I brought out, we couldn't make any long term labor relationship without a contract, and they were trying

to tell you that they had a contract long before this contract that Keeshin had.

By the way, another thing that was very interesting to me, and very significant, and I haven't heard any explanation of it—how did it happen that in the June 3rd meeting before any decision had been made, Mr. Keeshin had already bought his equipment? $166,000 worth of equipment he had, before the decision. Unbiased? Cricket? Fair deal? What do you think about it?

Just think that over. How did he know? Prior to the decision, how did he know he had it in the bag?

The only explanation on this record is that if he didn't get the contract, he would be in the automobile business. Well, he wasn't in the automobile business, and he wasn't planning to go into the automobile business, and he
2199 didn't go into the automobile business. We just didn't have any more chance at that stage.

You people, when you get in this jury box, you are not supposed to leave behind you all the knowledge you have gained in this lifetime. You are entitled to bring to this problem all the experience you have had in the daily affairs of this life, in this world, and how people act and why they act, and what the significance is of what they do and what they do not do.

I say to you, and I say it in all sincerity, when a man appears at a meeting to find out how he is going to come out in the bidding, and he is there with equipment already bought, that is a mere perfunctory performance, that he is just appearing there. It was all set to music, and if you draw on your ordinary business and life experience, you know it.

You know it, not from what I say, but from what they have said on this witness stand, and what their documents have told you.

I am going to another point. Can we have our lunch, your Honor?

By the Court: Yes, we will.

Have a nice lunch. Come back at 2:00 o'clock.

2200 (Whereupon a recess was taken in the hearing of the above-entitled cause to 2:00 o'clock p.m. of the same day, Tuesday, May 10, 1960.)

2201 • • (Caption—No. 56 C 323) • •

Chicago, Illinois
Tuesday, May 10, 1960
2:00 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company,

2202 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

2203 By the Clerk: The case on trial.

By the Court: Bring out the jury.

(Thereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: Kind of a short lunch, wasn't it? Maybe it is just as well. All right, proceed, please.

By Mr. McConnell: If the Court please, ladies and gentlemen of the jury, I want to call the jury's attention to some cross examination that I had of Mr. Padrick—

By Mr. Thompson: We object to reading from the transcript. As counsel well knows, it is improper.

By the Court: Objection sustained.

By Mr. McConnell: I never heard of that before, that I can't read from the transcript of testimony in the case.

The letter that was sent out, or promulgated, as Mr. Padrick said, stated that:

> "We would have it known that the railroads serving Chicago have enjoyed their relationship with the Parmelee Transportation Company, and they feel that the service of each has contributed to the success of
2204 the other, notwithstanding the economic conditions are such that the railroads must not undertake to pay a greater fee for the services performed than is necessary because the greater proportion of the transfer fee paid to the Parmelee Transportation Company is absorbed by the outbound railroads."

Then I asked him if he wrote that letter, and he said he did; and if he subscribed to the views contained therein, and he said he did.

I asked him whether or not the matter of the profit and the loss statement and the requests for further increases in rates, and all those things that he discussed, had been

prior to that letter, and he said that they were.

2205 Now after all of this discussion of all of these things about labor troubles, rate differences, service differences, what-have-you, and after everything that had been advanced as a factual issue, or factual consideration had been placed before this committee on May 19th, after all the evidence was in, except for a modification which fixed a ceiling on the rates of the Parmelee proposal, which you are all familiar with, this letter was written by Mr. Small, which is in evidence as Plaintiff's Exhibit 5.

He had been on the committee, and he writes reporting to Mr. Feucht, who was president of the Chicago and North Western Railway, and he writes under date of May 27, 1955:

"With reference to the contract for transferring passengers and baggage between railroad stations in Chicago, the present contract with Parmelee transfer company expiring June 30, 1955, the passenger traffic officers committee which has been negotiating consists of the following railroads, with Mr. Padrick,

2206 chairman of the Western Passenger Association included, New York Central, Pennsylvania, Illinois Central, Santa Fe, Baltimore and Ohio, and Chicago and North Western.

"The attached statement is a brief outline of the present arrangement with Parmelee and the arrangements proposed by Parmelee and by Keeshin. The Willett Company has indicated that they are no longer interested.

"It is the view of our passenger people, and I understand the same view is held by the committee members from the other railroads, that Parmelee should be awarded the contract because of their years of experience, their financial integrity, and the fact that they have given us a definite maximum of $1.25 per coupon after the fourth year of the contract.

"R. O. Small."

He attaches here, and this exhibit will go with you to the jury room, and I ask you to compare what is
2207 here, the different rates, services and so forth, the facts upon which this man, then uninfluenced by any other ulterior motive or consideration, viewed the situation.

2208 As of this date, speaking of the time when they were considering it in the proposals, this is what he said was the view of the committee.

That has great probative value up to that time unbiased, trying to arrive at a decision on the merits with the evidence before them, and here is their decision, as he states it, and it is Plaintiff's Exhibit No. 5.

Something else happened later, but it had nothing to do with the proposals. It had nothing to do with the service. It had nothing to do with the factors which were involved as to the weighing of service, of charges, of the relative merits of the contract.

It is highly significant. It is highly important. Up to that point we have a probative view of the relative merits of these proposals, of the service that Parmelee had performed and appreciation for it and a valid justifiable reason for keeping this contract or this service with Parmelee.

One more thing and then I am going to turn this argument over to Judge Thompson. I think I have mentioned that there were differences in service. Parmelee per-
2209 mitted a ride down to the Loop, to the hotels on the coupon and Keeshin didn't. That was the public.

There was a difference of service within an 82-mile radius, and you heard it from the stand. That varied according to the coupon rate. The witnesses so testified, that the coupon rate on the Keeshin proposal was higher than the Parmelee proposal.

There is no question about a dollars and cents difference to the public, the people that rode the railroads and used the service.

After it was all over and all the negotiations had gone, they did enter into a contract, and it was a normal contract, and it was a written contract, and it designated the kind of service that was to be done, and what it was, what it consisted of, and in some instances what the price was going to be.

When you get this in the jury room, their contract, I call your attention to Paragraph 7, which is relating to:

"Transfer shall be entitled to receive compensation computed in accordance with the following schedule from the applicable outgoing terminal line or out-
2210 going steamship line as the case may be for services performed by it under the baggage car transfer service."

Then under Paragraph 8, the special baggage transfer service is defined, and that had to do with picking up baggage known as "PA" service and taking it downtown and checking it, and you will find in Paragraph 4 under 8:

"The Transfer shall obtain revenues for such services by billing in the usual manner to the outgoing terminal lines for the coupon involved and shall retain for itself twenty-five cents for each piece of baggage."

That is from the public, and that price was fixed and determined.

We had some colloquy here when it was mentioned by Mr. Meserow, I believe, as to whether it was fixed. He used the right words; it was fixed. It was a fixed price which the public had to pay determined by a written contract between all the carriers and this transfer service.

2211 Then in another paragraph you will find at the end of this that they all agreed shoulder to shoulder

to recommend Keeshin's company as against any other company and to do everything that they could to see that Railroad Transfer Service:

> ". . . shall be identified in the minds of all incoming and outgoing passengers of the Terminal Lines using terminal stations as the sole and exclusive baggage transport service and enterprise upon which the Terminal Lines rely."

There was no such proposal or there was no such arrangement with Parmelee. It was a matter of individual contract what the charges would be on these pieces of baggage, and they were going to move one down for the coupon and 25 cents for each piece of baggage.

It may seem small, but there are a million and a half people using this service a year.

Then there was a fixed price in here for the removal of remains, $5.10 as a fixed price, arranged not by voluntary contract between the service and the traveler but stipulated by these railroads, and then there were schedules and tariffs set forth in here, and there is testimony as to what they were, 75 cents for the trunks, 50 cents for a piece of baggage, and referred to in here as a pickup and delivery service, which is in the contract itself, stipulating the prices should be in accord with the tariff.

Of course, the public was injured by that sort of an agreement. There was no competition as to the price, and they were doing everything they could to prevent any competition as to the price. They couldn't help but be injured. It was the exact injury against the public which these laws have been promulgated to stop. There is no question about it. There is no denial about it.

How can you find any other verdict in this case except that the public was injured by this change and injured by illegal conduct?

Now, I come to the end of my direct argument. I will have something more to say when I have heard Judge Thompson's argument. If I have talked too long, I am sorry, but as I said at the beginning, I don't want to leave this thing, leave anything that I have overlooked that you people should hear, because it is a serious case.

2213 It is a most important case. It is a case deserving of all the attention and all the acumen and all the ability you may bring to it.

It may look small to you in the way it is submitted, but the implications and the results and the effects of it—it will be, to my mind, like a stone thrown in the water, and the outgoing waves reaching out and out and out, and the effect of this discussion is impossible to predict, except that it is going to be one of the most outstanding, one of the most historical in any case that has been in this court in my time.

Thank you very much for your attention.

2214 By the Court: All right.

By Mr. Meserow: May I have a few minutes, please?

And Thereupon Mr. Meserow Addressed The Court And Jury In Argument On Behalf Of Defendants As Follows:

By Mr. Meserow: I would just like to take a few minutes, if the Court please.

First, let me apologize to the Court and the jury for my little outburst this morning, but when you hear counsel continuing to make misstatements about railroad witnesses, whom I don't represent, you sit back and you listen and you think things inside, but when he refers to me, as a lawyer who has practiced for over thirty years in these courts, and when he calls me as a witness, and I take the oath to tell the truth, and he tries to make me out a liar, I just couldn't sit still, but if my outburst in any way

offended any of you ladies and gentlemen, I apologize to you and the Court.

Let's remember this; that he called me as a witness, and whatever I testified to, he is bound by it. He can't criticize me. He can't say, "You are wrong, Mr. Meserow." He is bound by that. Whatever I said, he has to take it.

2215 What did I say about this union? I represented the Parmelee drivers, and I didn't represent Mr. Keeshin until the end of September, 1955. He started October 1, his operation.

Actually, it doesn't make a bit of difference who I represented, and even if I did represent Mr. Keeshin, what of it? I represented a lot of clients then, and I still do, other than Mr. Keeshin.

Actually, it doesn't make a bit of difference whether I represented Mr. Keeshin or I didn't.

It happened as I testified. It is in the record as evidence, his evidence, that I called the railroad representatives only for one purpose, to try to get Mr. Markin to come up from his three-cent offer to these drivers who had been underpaid for years, and that is what I told you.

Let's take Mr. Markin, the man on the other side of the table, the man that owns the Checker Motors Corporation, the man that furnishes the automobiles at his price to Parmelee Transportation Company, the man who owns and controls Transportation Maintenance Corporation that fixes and repairs these cars at the price he fixed, the man that owns and controls the Benzoline Motor

2216 Fuel Company, the Utilities Motor Fuel Company, and sells the gasoline and oil to these, to the Parmelee Company at the price he fixes.

He is the man that offered these laboring people, the drivers, three cents an hour increase, the great benefactor, and they were mad, and I testified to that.

Let's talk about this union that he calls an outlaw union. There is no evidence that it is an outlaw union. There are a lot of independent unions, and these men, I testified to, and it is in the record, that they were dissatisfied with their local union, Local No. 725, because the officers of their union never did a thing for these drivers, and they played sweethearts with Mr. Markin for years.

That is his evidence, as he called me as a witness, and it is evidence and he is bound by it, and when Mr. Keeshin said, was asked about the question about three years after 1955, "When did Mr. Meserow represent you," he said, "Either in late 1954 or early 1955. I don't remember."

2217 He didn't remember, and I don't think he would remember today if you asked him the question, but that is enough for that.

To show you what kind of misstatements my friend here, Mr. McConnell, makes, when Mr. Bayr, the general manager of Railroad Transfer Company was on the stand, he asked him on cross examination, "Tell me how much equipment do you have? How many cars of this kind and that kind? How much did they cost?"

He added it up. He didn't use an adding machine, apparently, and I don't know how far he went in school, but he added it up to $166,000.

While I was having lunch, I added it up, and I came to $312,800 on the testimony of Mr. Bayr.

He wants to make you think that Mr. Keeshin promised to put up $500,000 in this new enterprise, and he only spent $166,000.

2218 Now that is back in 1955 when prices were cheaper. They are much higher now. But he forgets that on top of the $312,000 that Mr. Keeshin had to buy uniforms for all of his employees; he had to put up working capital.

He can't start with nothing. He had to buy signs, he had to buy stationery, he had to buy office equipment, typewriters, everything else, furniture, and so on.

That came to a tidy sum that we estimate at $140,000. So add the $140,000 to the $312,000, and it gets darn near $500,000.

But Mr. Markin, his client, what did he say? He was running these old clunkers, that they admit were three years old, but I think they were a little older. But they were three years old, let's say. He was running his old clunkers and said, "Yes, now that I am being pressed by Mr. Keeshin, I will spend, Mr. Railroads, $500,000."

When? Six months to eighteen months or twenty-four months, he is going to spend it.

What did Mr. Scheeder, his witness, say? His witness said, "We were about to buy new equipment anyhow." Believe me, they needed it. So he was magnanimous, Mr. Markin. He was going to spend all this money when he would have spent it anyhow.

2219 Now Mr. McConnell characterizes this beautiful photograph of their Parmelee vehicle, which is in evidence, he characterizes this as being a picture that we took on a Sunday in the dark.

What is the difference when it was taken? This is their vehicle. Their own witness testified that it is. This was in use in 1954 and 1955 when they quit, or were supposed to quit.

Now, their own witness testified and identified this picture, Mr. Scheeder. This is the kind of equipment that the public got, not the fine, modern vehicles that you saw pictures of that were passed around to you by the Keeshin organization.

He criticizes this picture. Did he come up with a picture taken in the sunlight on a busy day? Not a single picture

did Parmelee come up with. Why? Because they are ashamed to show it. They are ashamed to show this jury, and you have got a couple of drivers of vehicles here, and they know. That is why he didn't come up with the pictures.

Now remember this, ladies and gentlemen of the jury: They brought this case. The burden, as the Court will instruct you, is upon them to prove their case. It is not
2220 our burden to bring in pictures of their vehicles with the sun shining and beautiful girls with bathing suits on. That is their job, and they haven't done it.

Now he complains that our witnesses had to be on the stand and he had to claw, he had to claw this information out of them. Well, that is too bad. They are our witnesses.

Now they brought the case five years ago or four and a half years ago. When they brought the case, it is customary for lawyers to first find out if you have any evidence, and do you have the witnesses to testify in support of your case so that you can prove it.

2221 They apparently didn't have any witnesses, so they had to claw it out of our witnesses. That is tough, Mr. McConnell. I feel real sorry for you. But the burden is on him, and the Court will tell you so.

All I say, ladies and gentlemen, I am going to leave the burden of this final argument to my good colleague, Judge Thompson, and all I want to say is this: Keep this in mind. All you have to decide, as the Court will instruct you, is was there any injury to the public by reason of the Railroad Transfer Service taking over this operation?

Keep in mind some of the things that were more beneficially put out by the Keeshin organization than were put out by Parmelee, such as the equipment. I won't go into all the details. The radio dispatch, the air conditioning, the automatic transmission and, well, all of this other equipment that you heard about.

In addition, we had faster service, as the railroad witnesses testified to. There wasn't much waiting over ten minutes at the most. We also had testimony of how long the Parmelee vehicles had to wait because of their
2222 poor dispatching system, and the fact that we were available for the Civil Defense, which was a benefit to the public, all our equipment, all our drivers. The fact that when a guest who came to a station to meet somebody could ride free, and Parmelee charged them seventy-five cents for that service.

All those things you have here. I won't bother you with going over them.

I thank you very much. Again, I apologize for my outbreak. Thank you.

And Thereupon Mr. Thompson Addressed The Court And Jury In Argument On Behalf Of Defendants As Follows:

By Mr. Thompson: May it please the Court, counsel for the Plaintiff, and ladies and gentlemen:

Mr. McConnell is right that this has been a tedious lawsuit, and there has been a lot of interruption by reason of difficult legal questions which were presented to the Court, which of course are not problems of the jury

The Court has decided those matters, and counsel are supposed to respect the decisions of the Court. As far as our side is concerned, we do respect the decisions
2223 of the Court. I shall argue this case only with respect to the matter which has been submitted to you, or will be submitted to you by the Court, and that is, was the awarding of the contract for the transfer of passengers and baggage between the stations in Chicago through the Railroad Transfer Service rather than the Parmelee Transportation Company injurious to the public, or contrary to the public interest, or however you want to express it.

Now that is a rather simple question to be sure, but it is a question which there has been some dispute about. We shall undertake to talk about those things that are in evidence, and shall not make any effort to draw upon our suspicions and by innuendo and insinuation ask you to decide this case contrary to the evidence; in other words, without any evidence to support your decision.

2224 Now I don't see any use getting greatly excited about this. Mr. McConnell says this is the most important case that is ever going to be tried, and that your decision here is going to be historic.

Well, I am not much of a prophet. I wouldn't know. But it is an important case, there isn't any doubt about that. Whether it is earth-shaking or not is a matter that only time will tell.

Now, I think what you folks want is light, and not heat, and I don't propose to get very excited about this. It is just another lawsuit. It does have an important question and the consequences of your verdict are important to a lot of important people.

Now, true, a railroad organization is a large organization. It has folks in all categories of service in the organization. Some railroads are larger than others. Positions are more important in some than in others. But there is one thing about it, and that is that the president of the corporation has been selected by the Board of Directors of the corporation, and is the chief executive officer, and he has the responsibility of making the decisions for the railroad, not someone who occupies a subordinate position, who has been assigned certain duties.

2225 Obviously, that person must do his job and he must express his views and he must communicate to his superiors in the organization his views and give them the benefit of his views so that they may make the

final decision. But everybody on the railroad can't make decisions. Nobody can make the decision except the chief executive officer when the matter comes to finally deciding it.

Just as it is here in court, the Judge has got to make the decisions. He is the chief executive officer here as far as the comparison is appropriate at all. The lawyers are agencies of the Court. We are ministers of justice. We are officers of the Court. But we are not those who are going to make the decisions. We are going to tell the Court and the Court's arm, the jury, what we think about the facts, and then the jury is going to reach the conclusion.

Now, there are some things in this case that are not in dispute, and I don't know why we should get all excited about it and waste a lot of time about it.

One of the things they keep harping about is whether or not they had a contract. Well, I don't know why any lawyer would spend any time arguing that question.
2226 There isn't any question but what there was a contract at all times.

Every one of you that has employment with any one has a contract of employment. If you don't get your wages, you sue on the contract and get your wages. Everybody that renders a service or that furnishes goods to another, expecting to get paid for it, has a contract. It doesn't have to be in writing.

Now when Mr. Sloan, who used the name of Mr. Anderson—they keep talking about Mr. Anderson. Mr. Anderson testified that all these documents were written by Mr. Sloan, who was one of his assistants.

When Mr. Sloan wrote in this memorandum that "We have been doing business with Parmelee all these years without a contract," he was using the layman's expression

of what a contract is, that is, that it was a written instrument.

Of course, that just isn't so, as any lawyer knows, and I am not going to waste any time trying to give you a course in the law of contracts.

2227 They did have a contract, and that contract, they alleged in their own complaint in the Superior Court of Cook County, and I read a paragraph from that to you the other day, and that stated in so many words, over their own name, that they had a contract and what the terms of that contract were.

Now the contract, according to their own allegations in this complaint, was not just a simple day-by-day something, but it was a contract which had obligations in it, so they say in their own language:

> "By these agreements the Chicago Terminal Railroads engaged plaintiff to render said transfer service and agreed that no other person, firm or corporation would be granted any right or privilege in connection with or be engaged or permitted to perform such transfer service in Chicago on their behalf. Plaintiff under said agreements was required to meet all trains and to provide sufficient facilities and personnel available at all times to transfer all pas-
> 2228 sengers and their accompanying checked-through baggage to whom Chicago Transfer coupons were sold or issued on through or combination railroad tickets."

Now it goes on another page or so. Why waste time on an issue that doesn't exist? Ofcourse there was a contract. They had a contract, true, without any termination date fixed from year to year, excepting as they would come to the railroads and make propositions for changing the contract which they had been operating

under the year before. After debate back and forth, they would agree on terms of what the contract was to be. The last one they agreed to in 1954 was that the service to be rendered by the Parmelee Transportation Company was to continue at a rate fixed by that settlement agreement in 1954 until June 30, 1955.

So that when we came to consider whether or not the contract would be awarded to the Keeshin group or to the Parmelee group in the spring of 1955, we had an arrangement with Parmelee that everybody understood, no doubt about it, was to terminate on June 30, 1955. All of the negotiations with Parmelee had been what will you propose to give us by way of service and cost
2229 after July 1, 1955? That is all we ever talked about.

So there isn't any question but what they had a contract, and there isn't any question when it terminated, and that was on June 30, 1955.

So we had to make a deal with somebody. The railroads had to have this service, so they thought, at least, and I think it is perfectly logical and reasonable they did have to have it because these railroads were selling through tickets to passengers. In other words, the railroad operating out of New York which might have been the New York Central or the Pennsylvania or, in those days, the B&O or the Erie, a railroad there selling a passenger a ticket to go to Denver, Colorado, or to Los Angeles, California, or Seattle, Washington, sold a through ticket.

Now none of these eastern railroads went beyond Chicago. They sold a through ticket which provided for transfer of themselves and their checked baggage in the City of Chicago between terminals.

That through ticket was the same, whatever choice of railroads the passenger made. If the passenger chose a

railroad that came into the Union Station, like the Pennsylvania did, and chose a railroad that went out
2230 of the Union Station, like the CB&Q did, then of course they didn't use the transfer coupon because there is nothing to transfer. You just get off one train and onto the other in the same depot.

But if they sold them a ticket on the B&O, then they got to the Grand Central Station when they got here, and if they sold a ticket out on the Union Pacific or the North Western, as it was then, then of course they had to go clear across town to get to the North Western Station to go on out.

Now it didn't make any different what choice of line the passenger selected. He got exactly the same service at exactly the same cost and with the transfer included, if a transfer was needed.

2231 So we had here, coming at the end of June 30, 1955, a matter of continuing this service, which the railroads had provided all these years because of the unusual situation in Chicago. There is no other place where railroads come in from the east or come in from the south or come in from the west or from the north and converge. There is no other place where all railroads terminate in the city excepting in the City of Chicago.

So we have a situation where there is no such thing as buying a ticket on the same railroad from New Orleans, Louisiana to Minneapolis, Minnesota. You have got to come in here on the I.C. or GM&O and you have got to go out on the Burlington or the Milwaukee or the North Western in order to get up there. Of course, you can go on the Soo, if you have nothing else to do but spend all day getting there.

But anyway, you have got to get on another railroad.

Now we came to that situation, and the railroads were

perfectly free to make a contract with anybody they pleased. They had no obligation to make a contract with Parmelee. They had no obligation to make a contract with Keeshin. They could make it with anybody
2232 that made a proper bid and submitted an agreement which was acceptable to them. They were entirely free agents so far as anything in this record shows to make a contract with anyone they pleased.

They were buying the service and paying for the service, the railroads. So when they wanted to buy the service and pay for it, they made their own bargain.

Now, there is another thing that is undisputed in this case, and which I think we might dispose of right now and get it all over with, and that is who is the Parmelee Transportation Company?

Now, it isn't some little helpless institution that needs somebody to protect it and guide it. Parmelee Transporation Company, this family tree, if you please to call it that, if this was going to join the D.A.R. or S.A.R. or any of the rest of these organizations, this would be the great grandfather up here, and these would be the grandchildren and children, and so on. That isn't what this is.

This is a chart showing the organization of the companies that are interlocked here, and which are all one family. That one family has a top, and the top is
2233 Morris Markin.

Now Markin owns all of Checker Taxi Company, Inc. of Chicago, 100 per cent of it. So when we are talking about Checker Taxi Company, Inc. of Chicago or Morris Markin, we are talking about the same thing as far as this is concerned. He owns it 100 per cent.

Now Morris Markin or Checker Taxi Company of Chicago, whichever you want to call it, goes down here and it owns 48 per cent of Checker Cab Manufacturing

Company of Kalamazoo, Michigan, 48 per cent of it.

2234 The Checker Cab Manufacturing Company of Kalamazoo, Michigan, owns sixty-three and a fraction part of Parmelee Transportation Company. Parmelee Transportation Company then, in turn, owns forty-seven percent of the Chicago Yellow Cab Company, but that isn't all of Chicago Yellow Cab Company that is owned by this same group, because Parmelee Transportation Company owns directly sixty-three percent of the Chicago Yellow Cab Company, but other fifteen percent is owned by the Checker Cab Manufacturing Company—is owned by the Checker Taxi Company of Chicago, which is Mr. Markin, so that the fourteen or fifteen percent owned up here, half of that is owned in the next category by the Chicago Cab Manufacturing Company, and then sixty-three percent of that is owned, so you can take your algebra and figure that one out.

Anyway, it is more than half of it, more than fifty percent of Yellow being owned by Mr. Markin.

By Mr. Lazarus: That is not true, Judge. You are not reading that thing correctly.

By the Court: If you are counsel of record,—

By Mr. Thompson: Yes, he is of record.

2235 By Mr. Lazarus: I am of record.

By Mr. Thompson: He is attorney of record, and he testified for his own client in his own case where he is attorney of record, if you want to get something else on the record.

There seem to be a lot of lawyers here that have springy seats. They can't sit still.

By Mr. McConnell: You have one of them.

By Mr. Thompson: I know it. I am not quarreling.

As a very distinguished man once said, that I can't always quote, but he said, "If you can't stand the heat, stay out of the kitchen."

By Mr. McConnell: That is a good thought.

By Mr. Thompson: That is a good thought.

By Mr. McConnell: Why don't you practice it?

By Mr. Thompson: I can stand all the heat you can give me. Now, let's go on with our lawsuit.

After we get this family tree here, and Mr. McConnell, who is the spokesman, can fix it up, if he knows how, but anyway, here are all the potatoes down here on the end of the vine, which includes the service companies and the oil companies, and what have you, and this is no new thing, and this is no 102 year old thing.

2236 This Parmelee Transportation Company, Inc., that is the plaintiff in this case, was born in 1929, and when it was born, it had as its creators a syndicate of New York bankers, so they call it, New York stock brokers.

This syndicate in New York, when it produced the Parmelee Transportation in 1929—

By Mr. McConnell: I object to this. There is no evidence of anything about that.

By Mr. Thompson: No evidence about what?

By Mr. McConnell: About any syndicate in the record.

2237 By Mr. Thompson: Well, I read Mr. Markin's own testimony, and the jury is going to have to remember whether this is so or not, but I read Mr. Markin's testimony as you remember where Mr. Markin said that a syndicate of New York bankers organized this in 1929, and Mr. Markin who now owns it ought to know.

These bankers, after they got this thing organized, just had a bunch of stock. They had to buy something for their company to function with, so what did they buy? I don't know what all they bought, because we are not interested in all the things they bought, but according

to Mr. Markin's testimony I read to you they bought this transportation interstation service here in Chicago, which was then owned by an old company called the Parmelee Company, not the Parmelee Transportation Company, but the Parmelee Company owned this interstation transfer service here, and that is all it owned as far as this record shows.

The Parmelee Transportation Company in 1929 bought that as one of its assets. It also bought, so Mr. Markin testified, as I read to you, the Yellow Cab Company of Chicago, which is another one of its assets, and bought it in 1929, so he said, and so we have this institu-
2238 tion commencing in 1929.

According to the testimony, and there isn't any dispute about this, as I say, we have an institution which owns all, either in controlling interest or 100 per cent, of the ground transportation in the City of Chicago, the Yellow Cab, the Checker Cab, the majority in both instances, the Air Transport, 100 per cent, the interstation transfer, 100 per cent, and so if you want to ride, you had to ride with Mr. Markin in 1954.

What happened in 1954? Nothing new happened in 1954. It was simply a repetition of what had been happening year after year.

Mr. McConnell said there had been three fare increases in 102 years. Well, I don't know where he gets his information about the first sixty years, but the last thirty years that we are talking about there have been about a half dozen, so we don't need to bother about the other ninety years or sixty years which nobody knows anything about as far as this record is concerned.

I am sure back in the days when they drove a horse and buggy pulling the hacks between the stations here in 1853, I don't think they used any airplanes or
2239 automobiles in that time, and if they did, we have not proven it yet, but when they were pulling these

things by horse and hauling the baggage in the drays and the people in the hacks, then of course they had some kind of a charge, but we don't know what it is.

In 1934, so the testimony is, the charge was 75 cents, and it continued as that until 1942.

In 1942 it was increased from 75 cents to 85 cents, and then in 1948 it was increased from 85 cents to $1.00, and in 1952 it was increased from $1.00 to $1.05.

2240 In 1954, and we will go through the demands in a minute, it was increased from $1.05 to $1.12½ for the first three months, and from $1.12½ to $1.20 for the second three months, and then one cent for each three cents of wage increase after July 1, 1954, with a contract on through to June 30, 1955.

You can figure up how many changes those are, but I am not too concerned.

In 1954 this thing had been going on time after time, time after time, these increases with a complete refusal to show the books, and why didn't they show the books to support their demands? It is perfectly obvious why they didn't. It is perfectly obvious why they didn't.

The whole kit and kaboodle of the whole family is in a set of books, and they couldn't separate out of that big family this local interstation transportation service here, because it isn't even mentioned in here.

It was just a little part of the Parmelee Transportation Company, Incorporated, and of course they couldn't tell us whether they were making money or losing money

2241 unless they wanted to bre[illegible] it down and show us whether they were or not.

Another thing, when the Parmelee Transportation Company bought some vehicles to furnish this interstation transfer service, where did it buy them? It bought them of Mr. Markin who owned 48 percent of the Checker Manufacturing Company up here at Kalamazoo.

If they wanted to show they were making a lot of money, then Mr. Markin could sell his cabs to them for a very low price so they didn't pay any profit to anybody, and that they just got them at actual cost of manufacturing, and they could lose some money up here if they wanted to, because they would make it up down here.

If they wanted to show this institution was losing money, all they had to do was sell the cabs at twice what they were worth, and then they would lose money. Of course, they couldn't show us the books, and they didn't. That is the important part of it, and they refused year after year to do it.

Finally, these railroad men got a little fed up with that. That is those who were responsible for running the railroads and making them profitable got fed up with
2242 it. Of course, the man who was just hired to do a job, he didn't have to make the railroad make any money, and he wasn't so fed up, but those who were at the top, the chief executive positions, those responsible for the management of the railroads and the interests of the stockholders and the public did get fed up with it.

That was one of the things, and that wasn't phony either, as Mr. McConnell would like you to believe, but that was one of the real things that prompted Mr. Whittington and Mr. Gurley and the other men of responsible positions who testified to make a change.

2243 Also, the matter of continuity of service was of extreme importance. You don't stop the railroads—you don't stop the people coming in to town overnight. They flow through the City of Chicago regularly every day, and you have to have a continuous service if you are going to have any service.

I appreciate there is a stoppage in any kind of service. I understand that, and nobody is asking for perfection

here, but in 1947, and that is going back plenty far enough in this thing, in 1947 the Parmelee people themselves came to the railroad representatives and said to them, "We have been working on this matter of making a bargain with our labor folks, and we have not been able to come to any agreement."

In Exhibit No. 9, which we offered in evidence, they say that:

"Prior to the expiration of our union contract,"

and this is on July 29, 1947, and the contract expired on June 30, 1947, but—

"Prior to the expiration of our union contracts on June 30, 1947, negotiations were conducted between
2244 the company and the union, and various compromises have been offered by our company to our employees, and to date all offers have been totally rejected, and it is apparent we will face a strike at any moment because in no event can we meet all their demands."

There is a lot more in that letter, but that is enough.

In other words, there was a communication to us telling us they had had these threats, and that they had to have—and that we might be faced with a strike, and then in No. 7 it was represented again by Mr. Landman, Passolt and Mr. Scheeder, who were the representatives of the Parmelee people at this meeting with the representatives of the Terminal Lines, where it says:

"We gave you recently a brief outline of the possibility of a strike of the Parmelee drivers covering increases that they have made. The offers that have been given, the attempts at mediation, and so forth. However, they stated it was their understanding,"
2245 that is, these three men,

". . . that the drivers intended to take a strike vote this Friday, August 1, 1947 and that possibly all of their service would cease at 12:00 midnight, August 1, in the event of a strike vote."

That was brought to the attention of the lines. They had to do something, because they couldn't leave their people sitting over at the stations depending on the Yellow and the Checker taxis, so they made a recommendation that in connection with the handling of passengers "We will give each of our passengers that gets off the train with one of these coupons, transfer coupons, 60 cents in cash and then take the 60 cents and pay it to one of Mr. Markin's cabs and let him take them across town."

2246 In the next document they say, "We will arrange to have the baggage transferred," document No. 8, "arrange to have the baggage transferred by shuttle service. That is, we will back up a baggage car to one of the depots and load the baggage in it and then we will move it to another one, and we will switch it around town and get the baggage around some way."

Those were the arrangements made, tentative arrangements obviously in 1947.

This matter of having these difficulties was not just once, it was a continuous thing, and in 1950 they really had a strike and it lasted six months, and they put into effect this temporary service, as I have indicated.

In 1954 you will remember, after we made our deal with them and had our settlement to pay them up to $1.20 for the second quarter of 1954 and made a deal that the contract from July 1, 1954, to June 30, 1955, would be the $1.20 plus one cent for each three cents of wage increase, well, when July 1, 1954, came around, were we able to tell whether or not we were going to have service the next morning or the next morning or the next

2247 morning or on August 1 or on September 1?

No. Mr. Markin writes us on September 23, 1954, which is practically three months, two and a half months after the June 30th date when the contract expired, and

for two and a half months we were sitting wondering whether the next day we were going to have service, and he says on September 23rd:

"We wish to advise you that we have entered into a new wage agreement with the union representing these employees who are engaged in this transfer service. These agreements are effective July 1, 1954."

That is backtracking the two and a half months.

". . . and terminate June 30, 1955, and necessitate an increase of five and a half cents."

Therefore,

"You are stuck for two more cents, and therefore your charge will be $1.22."

The contract price then by Parmelee after July 1, 1954, was $1.22, and put into effect, of course, and backed up to July 1, but anyway, it was $1.22 from July 1,
2248 1954, to June 30, 1955.

This $1.22 was still not the price which Mr. Parmelee, or Mr. Markin, said he had to have in order to break even. He said, when he made his demand for an increase to $1.25, retroactive to January 1, 1954, that he really needed $1.32 to $1.35 to break even, and he said during all the negotiations, "I just can't make a deal with you less than $1.25 retroactive to January 1, because we are not making any money, and I won't have a cushion to carry any further losses."

He said, "If this matter of the number of coupons or number of passengers transferring keeps on going down and reducing in number, then it will have to go up to $1.50 probably."

Well, as a matter of fact, according to his own table which he furnished, it would have to go up even more than that.

2249 The negotiations went on for three months, January, February, March, and we come along in April,

and we still have no agreement, practically four months, and on April 19th they had a meeting with Mr. Markin and his representatives and tried to settle with him for $1.20 retroactive to April 1, leaving the $1.05 in effect from January 1, to April 1.

No; he wouldn't have that. He had to have $1.20, and if that was as far as they could go, he would have to have $1.20 retroactive to January 1, not April 1.

They argued back and forth about it, and then they said, "We will adjourn until April 26th," which was a week later, "and we will consider the matter further."

They all met again April 26th and that is when, after negotiating back and forth, they finally compromised by $1.20 retroactive to April 1st, and by splitting the 15 cents for the first quarter, which made $1.12½ coming up 7½ cents from the $1.05.

At the time they were arguing all this business about how much money they had to have in order to meet these demands, they got a lot of papers from the Parme-
2250 lee people, this big bundle, all of its being submitted to them in support of their claim.

There is no profit and loss statement. It is just a lot of figures to support their arguments that they had to have this amount of money in order to break even—$1.32 to $1.35, and then in support of all that argument they put a lot of tables on here, and one of them is Schedule No. 2 to this long letter he writes, and in this Schedule No. 2 he says, and submits to the railroad people on April 16, which was the time before they finally came to their agreement, the following:

"The premises on which this proposal is made is that Parmelee must have men and equipment available to meet all schedules and emergencies, so when the number of coupons received by Parmelee is decreased, a corresponding

increase in the rate schedules be adjusted quarterly on January 1, April 1, July 1 and October 1 of each year."

He wanted to fix it on quarters.

". . . In accordance with the number of coupons re-
2251 ceived in the preceding quarter. For example, if the number of coupons received by Parmelee during the second quarter of 1954 amounted to more than 390,732 and less than 390,382, Parmelee would receive $1.10 per coupon for the quarter commencing July 1, 1954 and then ending up September 30, 1954, as per the attached schedule."

Which I will call to your attention.

"It is further proposed that adjustments also be made in the price of the coupon on the same dates as above for increases in wages paid to the drivers. The rate of increase in the price of the coupon to be one cent for each three cents increase in wages."

He is referring to this table, and saying that if the passenger business keeps dropping down, the passenger number of coupons, then:

"We will be going up in the coupon rate one cent for each one per cent decrease in passengers,"

or 8,000.

2252 Looking at this table over here, you will see that he increased it in this column one cent, as far as the price of the coupon is concerned, for about every eight thousand, which is a round figure, for about every eight thousand reduction in passengers, and this will show that from the railroad passengers passing through Chicago that there is never any variation in the thing, as it is just plain dropping off of passenger traffic because of all forms of competition that we have, and people are not staying home, but they are just traveling otherwise.

He comes down here, and he says:

"When the total of the passengers comes to 1,022,761, then the charge per coupon will be $1.50."

That is the table he is referring to. I took my little pencil and figured this out, and we now are transferring a little over 900,000 passengers, which is 200,000 less than this figure that he got down to in his table, and divide 200,000 by eight thousand, and you get fifteen cents, don't you, and fifteen cents added to $1.50 means that on this day we would be paying $1.65 for every coupon if this
2253 little fellow Keeshin hadn't had the crust to challenge this octopus and step on one of its tentacles and say, "You are not going to rob the railroads any longer in my town."

That is what it amounts to. He was the first one that had crust enough to tell them to "Move off this dunghill if you don't have enough gumption to make this business pay on your own operation. Don't expect somebody else to subsidize you. I will take this job, and I will manage it so that I can make money by reason of improvement in the management."

So Mr. Keeshin had the effrontery to bid for this and push this octopus off the streets that controls all the transportation in effect in this community on the rubber tires, and having had this effrontery, he has to defend himself in a lawsuit along with the railroads with a charge of having done something mysteriously wrong. What it is, I don't know.

There is no evidence that anybody did anything wrong except Parmelee.

Well, the railroads started out trying to get some bids. They tried two or three years to get it and that
2254 didn't do any good as far as the railroads were concerned, but it made Mr. Markin say to himself, "Well, they can't get any bidders for this job. I have the equip-

ment on the streets. Nobody is going to take this over and challenge me and this transportation business in Chicago, so I am now the cock of the roost, and I will take from these railroads whatever I want to take from them.

2255 So they invited some more bids in 1954.

Now we keep getting a lot of information about what this resolution was that was passed on January the 5th. After considerable discussion, the railroads, tired of this business of being blackjacked every three or four years, passed this resolution. Now this resolution doesn't say anything about this being solely for economic reasons. Obviously, economy was uppermost in their minds. Obviously they were trying to stop this constant jacking up of the price of this coupon.

So the thing that was uppermost in their minds at the time they passed this resolution was dollars, economics, pennies.

But here is a resolution they adopted, and it is not limited to economics.

"It is recommended that a committee consisting of the—" you know the six railroads without my reading them again. ". . . be appointed to make a study of the transfer situation, including various types of operations that can be devised to definitely meet the needs of the public

2256 without increasing the cost to the railroads. Report and recommendation to be made to the lines later."

So that the thing that that committee was appointed for was to investigate this whole thing and to reach a conclusion, and then they began the investigation. They invited everybody to come in and bid that would come in and bid. Nobody put in a bid except Keeshin, and when did he put his bid in?

You remember the September meetings that they had,

and then after Keeshin talked to them a while, he said, "Well, I will make a survey of this thing, decide whether I want to file a formal bid."

He made a survey, and then he called the committee together again, and said, "I would like to sit down and talk with you about the kind of service you really want. I have got some ideas about this thing."

So they had a meeting in November, and they talked about all these matters that Keeshin thought could be done to improve the service, and the committee thought this was good and that was good. That was the negotiation. Who proposed what and what was proposed is of no consequence then excepting it shows that men were thinking and men were working together.

2257 So Keeshin, after that meeting, filed a written bid on December 15, 1954. Now just don't forget that.

And what was his bid? $1.20 for the first year. Parmelee was then charging $1.22, and just couldn't get along without it. In fact, he needed $1.32 or $1.35 to break even, and by his own table it was going to be $1.50 right soon. But he just couldn't get along without it.

Keeshin files a bid for $1.20. Now, he sure wasn't copying anybody else's bid. He proposed not only $1.20, but he proposed to give them better service, and he outlined it. I will not go into detail.

Then early in January the labor union here that represented the Teamsters, different unions, I suppose, made one of these agreements with the employers which gave the base pattern for the three year labor contract.

2258 Well, after that came through, Mr. Keeshin got a letter from Mr. Bone, chairman of the committee. He said we just noticed this in the paper. Does that make any difference in the bid you submitted on December 15th?

Mr. Keeshin wrote him on January 15, one month later than his original bid, four days after he got the letter from Mr. Bone, and he said, yes, it makes a difference. Now I can give you a fixed rate: $1.20 the first year, as I have already told you; $1.22 for the second year because of this new wage scale; $1.23 for the third year; but since the labor unions only have a three-year agreement with us, the last two years, of course, I would still have the one cent for each five cents increase in the labor cost for the fourth and fifth years of this proposed contract.

Now that is on January 15. Has Parmelee bid yet? Has anybody bid yet? Nobody but Keeshin. Mr. Parmelee still has his head up in the air. He says nobody can get this away from me; I have had it too long, and I run this town.

So he just arrogantly refused to file any bid until the committee convinced him that if he wanted this busi-
2259 ness, he had better file one and tell what he would do after July 1st, 1955.

So he filed one on March 15, and what is his bid? What is his bid? How did he decide on March 15, 1955, that he could do this work for $1.20, which he had said only one year before he couldn't possibly do for that. But he said in his March 15 bid, I will reduce my $1.22 present charge to $1.20.

Where do you suppose he got the idea of the $1.20? We will just have to wonder because I don't know, but I have got my suspicions.

All right. He makes that proposal, and he is going to charge one cent for each three cents, not five cents, each three cents wage increase. That is in addition to that he had in that bid we should give him a one-cent increase in coupon charge for each one percent decrease in the number of transfers. I just showed you that that would be

now costing us $1.65 per coupon if we had taken that bargain, but we didn't take that bargain.

We told him then that we wouldn't even pay any attention to such foolishness of guaranteeing him a volume
of business. The railroads didn't have any guarantee
2260 of any continuing of business.

So that is the way things stood until April 6th when Mr. Keeshin then wrote a letter in which he amplified the kind of service he was going to give, in which he said that the railroads can have a choice of some of these different things that I have indicated when we make the formal contract if you grant me the contract.

He said I recommend strongly that you stop this foolishness of having your station employees put the baggage, carrying on a truck into the baggage room where the checked baggage goes to, stow it on the floor, then put it back on the truck, wheel it out and put it on one of these transfer vehicles and carry it across town. He said there is three handlings that you don't need to do at all, if you do it right, so I propose to set trailers at the platform so that when you come in with the baggage, you haul it right in, you move it right up to the tail end of the trailer, you set it on the tailgate, and that is the end of that. My people will load it.

Now, he said, of course, if you still want this old straight-
body service, you can have it, but I recommend strong-
2261 ly against it.

All that was made perfectly clear in his April letter, and later on, of course, in the firm contract.

2262 Now we go to May 19th. They make a great fuss; they draw on their suspicions frightfully as to the May 19th meeting.

On May 19th these folks were getting to the place of making a decision, and when you get to the place of

making a decision, you call on the people that can decide. So Mr. Coleman, who had no authority to make a decision for the B&O in Chicago, writes to Mr. Whittington, who is the general passenger traffic manager of the Baltimore and Ohio Railroad, that:

> "I would be glad if you would come out here and attend this meeting on May 19. We are going to hear both of these people now that have bids in and I would like to have you here to get it first hand so you can make this decision."

So Mr. Whittington came out.

Now he is greatly abused because he came out and represented his railroad which his is hired to represent. I didn't know that was any offense.

They said that Mr. Simpson, president of the railroad, told Mr. Whittington how to vote. Of course,
2263 Mr. Whittington says that Mr. Simpson never told him anything of the kind; never at any time told him how to vote; didn't even know how he voted until he reported to him later on. That is undisputed, and I won't spend any more time on that.

The same thing is true with the other people. They voted their own convictions, and the votes were cast later on. But I mean, at the May 19 meeting, they all listened.

Mr. Padrick made it perfectly clear that no vote was taken at the May 19 meeting, but he said at the conclusion of the day, "I got the impression that there was a concensus that Keeshin's bid was the one that ought to be accepted."

Now, Keeshin had been perfectly frank with the committee. How in the world they ever stood for all this horsing around of Markin is beyond me, but he would never answer any questions. He dodged and fiddled and

fooled about it, but Keeshin answered them bing, bing, bing, right down the line, and of course, committed himself definitely about all the questions that came up, air conditioning, furnishing financial statements, new equipment, and all the rest of it.

2264 Of course, Mr. Keeshin didn't know how much this new equipment was going to cost. He hadn't been in the business. He said that he estimated that it would cost $500,000.

Well, his estimate was liberal, as it ought to have been. But by the time he got his equipment and his working capital and got this business going, I haven't the slightest doubt that it was $500,000, and perhaps more.

Anyway, that is neither here nor there. The point is did he get enough equipment to do the service, and that is all we are interested in.

Now Mr. Markin says, "I propose to spend half a million dollars if I get this contract." What did he propose to spend it for? He never had half a million dollars worth of equipment in all of his history in this transfer business so far as anything in this evidence shows. There is not a syllable of evidence.

I asked Mr. Scheeder, vice-president of the company, how much each vehicle cost, how much this cost, how much that cost, and he didn't know anything about it. I asked him how much they had invested in equipment to furnish this service, and he didn't know that.

2265 So there is no evidence whatever, and the mere fact that Mr. Markin said that he was going to spend $500,000 in the next 18 months or two years or six months, one place it says one thing and another place it says another, it doesn't make any difference what it is. It is just a lot of idle conversation, and all he would have done was probably add a few more clinkers that he would have bought up in his manufacturing plant at

Kalamazoo, and got by with the least he could get by with, which is all he had ever done, which is as much as anything in this record shows.

By the Court: You are about half way, Judge?

By Mr. Thompson: I am much further than half way. I am about to quit.

By the Court: We will take a few minutes' recess.

(Whereupon a short recess was taken, after which the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

2266 By the Court: All right. Bring out the jury, please.

(Thereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: You have a full hour, Judge and you have twenty minutes, Mr. McConnell.

All right, proceed.

By Mr. Thompson: I got a little stiff from resting. You know, an old race horse has got to be kept going.

Anyway, we were up to the May 19th discussion, but there are a couple of little things I want to dispose of that drops back apiece.

There was a lot of talk made about this 63rd Street transfer out here where Parmelee took our interstation coupon and gave it to one his taxicabs and then they charged the rest of it.

Anyway, it is all out of the case because on Schedule 15 of Exhibit 5, Defendants' Exhibit 5, which the Parmelee people furnished to us, it says:

"Analysis of revenues and expenses at the Englewood 63rd Street Station for the year 1953."

2267 Then they show that that wasn't so hot; they lost money. Then at the bottom it says "Discontinued

March 22, 1954," which was a year and a half before we took over.

Anyway, there wasn't any service out there after March 22, 1954, according to their own document. I wasn't there.

Then there is also on this schedule a Schedule 5, which shows this two-a-day baggage transfer, and it shows that the baggage transfer was made at 10:00 o'clock in the morning. Of course, you can't make it all at once, but the first station they came to was 10:00 o'clock in the morning, and they finished at 12:30; and they then started again at 3:00 o'clock in the afternoon and finished at 5:00.

It says at the bottom, "Baggage arriving on trains after 5:00 p.m. must be held by the railroad until the following day."

So that ought to dispose of some of these sidelines that we are talking about.

Now as I was saying, this May 19th meeting, the thing was gone through in great detail. Everybody knew
2268 this was the last round. Keeshin was brought in there and told to tell the group sitting there together what he would do, and he told them. He had told them in writing on December 15, and again on January 15, and it was all settled as far as he was concerned, and there was no modification of it.

Markin had made his proposal on March 15, and that was all settled as far as anybody knew, and the only thing that he changed at the May 19 meeting was that he finally took out of this proposal this one-cent increase for each one-percent decrease in the number of coupons. In other words, that second escalator clause he took out. Otherwise he left it just the same, which was $1.20 for the first year and one-cent increase for each year after that.

2269 Then the meeting adjourned. The next day a telephone call comes in which he says what? He might

have had Keeshin's January 15 bid right in front of him, and he said, "I will do it for $1.20 the first year," which Keeshin had said, "and I will do it for $1.22 for the second year," which Keeshin had written on January 15, 1955.

"I will do it for $1.23 the third year." Was that just pure coincidence, just happenstance, that Mr. Markin made identical bids that Keeshin had made five or six months before?

Then of course in order to do him one better, he said, "$1.24 the next year and $1.25 the next year."

Of course there is a lot of fuss made about the fact that his last year was going to be $1.25, whereas Keeshin's last year was $1.27. That is two cents difference, half the price of a postage stamp, but remember that Mr. Keeshin's first year was $1.20, whereas Parmelee was then charging $1.22, so every reduction in this whole program from the start to the finish was because Mr. Keeshin came in to bid.

Otherwise, as I already demonstrated to you, we
2270 would be paying $1.65 instead of $1.25, so the two
cents that they keep fussing about at the fifth year was knocked off the first year and it will all balance out even anyway, but the important thing, and Mr. Whittington made this point, and he said, "I received this news that Markin called up and said that he would make the same guarantees of ceiling that Keeshin had already made five months before as far as the first three years were concerned, that it didn't influence me in the least, because Mr. Keeshin could keep his bargain.

"He had a contract with his labor. He knew what he was going to be able to do, and he could keep his bargain. but Mr. Markin told us at the May 19 meeting that he had no arrangements with labor, that he didn't know whether he was going to even get a contract or not,"

and it didn't make any difference to Mr. Whittington, and it wouldn't have made any difference to any man, to a man of any common sense what the price was if you were not going to get the service.

What he wanted was service. What all the railroads wanted was service, and if you were not going to get the service and going to have to sit on needles and
2271 pins every year trying to find out, they wanted to know.

They said, "Of course, Mr. Markin couldn't make a contract for labor for more than a year at a time because he didn't know whether he was going to have a contract or not," in one breath, and in the next breath they say, "He was going to have a contract for the rest of his life because he had had it for his grandfather's life before him, anyway a long time before."

The truth is that Mr. Markin could have had the same deal exactly for the first three years that Mr. Keeshin had, because the three year labor agreement that was made was not made with just Keeshin, with his labor union or anybody else, but it was made for the industry, and the industry having made the contract for a three year period, in January, 1955. Mr. Keeshin then fixed his bids for three years.

2272 Mr. Markin, when he bid on March 15 didn't fix any bid for three years. He still was persisting in a double escalator clause, going up with wages and going up with reduction in coupons.

We come to this matter of making a decision. They referred and asked you to take note of this document that showed an analysis of the two bids. There is an analysis of the two bids, and I join with Mr. McConnell in asking you to take a look at it. It would be very illuminating.

"The contract term" where Parmelee asks for six and a half years, it says here, and I think it is one place in his record they said they wanted one to June 30, 1960, and the next place they said they wanted one to December 1, 1951, but anyway, Keeshin wanted a five-year contract.

"Coupon rate" and then these rates we have been talking about, the present rate of $1.22 and the $1.23 bid rates we have been talking about.

"Wage contract status." It says that negotiations are in progress on June 2nd, or rather May 27, three days before the deadline, and no contract, and over here it says that three-year contract already fixed with
2273 Keeshin. Maximum rate goes on, and all the rest of these things down here, and it is all there.

"Examination of books by the railroad." It says that railroads not permitted to examine. Parmelee will not permit the examination. Keeshin permits the examination and will furnish a certified public accountant's statement.

Of course, that may sound like it is of no consequence, but I submit that any of you if you were dealing with somebody to make a contract for an increase in the charge for any service, I don't care what the service is, and they came to you and said, "I need an increase, because I am not making any money," well, the perfectly natural thing for you to say is, "Well, if you are not making any money, where are your books? Let us take a look at them. We can tell whether your representation is true or not."

Mr. Markin said, "I can't show you my books, because if I show you my books, then I am going to show you the story of all of this stuff, and that will never do to let anybody know what I am doing with my books with fifteen companies."

2274 Now, we come to the final where we get a contract and we are to take over on October 1, 1955. What happens?

Does Mr. Markin, the Parmelee Transportation Company, play the good loser and walk off the premises and let the railroads go ahead and render the service to the customers?

No. They move their old clinkers down alongside the depots at every place where there was room for one to keep us from rendering the service that we had contracted to render.

2275 Who was organizing the crew to interfere? Mr. Freeman was there organizing them and spotting them around at the different stations, telling them what to do, and then Mr. Krock — and boy, there is a piece of furniture — Mr. Krock adopted the technique of the big lie, which is adopted over in Europe by some people, that if you are going to tell one, tell a big one, and he says that for two and a half years just out of curiosity he gets up at 7:00 o'clock in the morning and goes down and looks at these stations to see whether there is anybody waiting there on the platform or not, to see whether the windows are open for the taxicabs or the transfer wagons, just curiosity, that Mr. Markin didn't know anything about it, that nobody told him to do it, that he was just curious.

If there ever was a "Krock" with a big crack in it that you can see clear through, this is one of them. You can see clear through it.

I didn't need to bring any evidence on it to prove he was telling you falsehoods, because you knew he was, but we did bring the witness who knew.

We brought Mr. Deitreich, and Mr. Deitreich says
2276 that he is on the job all the time, that it is his business to be there, that he was on the job in December, on December 20th at the Dearborn Station, that when the trains came in in the morning, that six of them would come in in an hour, that it is a business

to be there to see that the passengers are properly taken care of.

He said there was no such thing as 200 people on the platform waiting for an hour for transportation. Of course, Mr. Deitreich would know whether there were or not, and then Mr. McConnell, for the edification of all of us, put on one of these typical television trial scenes of asking him what kind of clothes he had on, on this day, and he told him what kind he had on, that he had on a brown suit and tan shoes.

There isn't any contradiction of that, you know, none at all.

Then he asked him where he ate lunch and he said he ate lunch at the Harvey Restaurant, and there is no contradiction of that, you know. It is absolutely the truth as far as we know, and I am sure we don't care a continental whether it is so or not, because it was just one of these things.

2277 You go through a rigmarole of cross examination about a lot of things that don't concern anybody, because you don't have any sensible questions to ask the witness. That is the only reason you ever do it.

Now, getting past that, Mr. Deitreich told you the truth, because nobody has contradicted him.

Then we have Mr. Deitreich also saying that in the summer of 1956, and the summer of 1957, he said, "When I was still on the job, there was no such thing as day by day congestion of people on the loading platform" and he said, "When the folks get out there with their baggage on the loading zone, they are loaded instantly as to the vehicles that are there and within a minute, 10, 15 or 20 minutes the entire group is gone, however big a group it is."

2278 Then we put Mr. Bares on the stand, and then we have him running all over the yards out there

doing everything else, but Mr. Bares says he was right there looking out the window all the time, and there was no such thing as 100 people or so standing on the platform day after day in the summer of 1956 and in the summer of 1957.

Ladies and gentlemen, you know and I know that if these passenger agents of these railroads had allowed that sort of service to be given to their customers, there would have been one less Bares and one less Deitreich in the employ of two railroads in this community. It just isn't so, and we will drop that.

Of course, Krock was the only fellow who testified to all of this. He was probably one of the wrecking crew team on October 1st.

As you know, this lawsuit was started on February 17, 1956, but it didn't start the night before. It started on October 1, 1955, when the service was taken over, and they put these people out there to interfere with our taking over properly, and then Mr. Krock was going around satisfying his curiosity getting this evidence, of course, for this lawsuit, and then it continued for
2279 two years after this lawsuit was filed, just out of curiosity.

There was something said about Mr. Keeshin's employees that are now performing the transfer service being members of an outlaw union. Of course, there is no proof that any union is outlaw. The deduction that I assume they are drawing is that any union, any independent union or any other union, whatever it may be, if it isn't a part of the American Federation of Labor-CIO, then it is outlawed.

Well, I didn't so understand it. I didn't understand that the only legal or lawful unions in this country are those that are affiliated, and they keep talking about

Keeshin or Parmelee having a contract with one of the railroad brotherhoods.

Well, that is the first time I have ever known or heard that the Clerks Union of the railroads was a brotherhood. As I understand it, there are four brotherhoods, and none of them belong to the AFL-CIO, and I suppose they are all outlaws, too, these brotherhoods.

That is just some more fog brought in to conceal the light.

Now, this service that we have. We have a lot of
2280 pictures of some nice looking girls and also some nice looking automobiles. I suppose these girls are entitled to our interest, not only because they are good looking but because they are rendering good service.

You saw these pictures before, and you can look at them again if you want to, but here is one of the girls rendering the service at the desk there telling a couple of folks whatever they are asking. I suppose.

It looks like she is giving service. Here is one of our vehicles. That looks like a nice vehicle. There are doors on each side, nicely painted, folks looking happy as they are coming towards the vehicle, and here is an entire garage full of vehicles and here are a lot more of them, and here is one of our trucks, and here are some more trucks, and here is another bus, and here is a picture which shows how we put the baggage in the back end of these trucks, and baggage is being loaded there.

There is the air conditioner up here on the top of the thing. As far as we know, all the witnesses who testified that are interested, except Mr. Krock, said the air
2281 conditioning was working, that it was all fine and dandy.

Here is the rear end of one of our cars showing they put the baggage in and that there is a partition in there so as to keep the winter breezes from blowing down the backs of the passengers' necks while they are loading.

Of course, they have had them inside of the station, but there are no breezes in the backs of the necks, but they have been making a big fuss about that.

This equipment is all here. We showed you the pictures of ours. Of course, we didn't have a chance to take pictures of theirs while they were operating, because we didn't go snooping around to see what they were doing, and all we could do was to take one of them that was hidden in here behind something, but there it is anyway, and that is the limousine, the 7-passenger limousine, which is nothing but an old broken down Yellow cab, not even nearly as good as the Yellow cabs out here on the street now, because they look pretty good, but this has a slanting bobbed off tailed back there that you couldn't put an overnight bag in, as far as you can tell by looking at it,

and if they had any pictures of showing this great 2282 recessed place back there where you put baggage,

why didn't they bring the pictures in here and let us see them?

Of course, there is nothing new about recessing the back end of an automobile to make a baggage compartment. All of them are. The recess means that the space goes in under the back seat.

Of course, they said they cut down the size of the gasoline tank so as to save them a couple more inches for a duffle bag.

Anyway, the customers all say that the service of Parmelee was satisfactory during the period of time that Parmelee was rendering it, which meant, of course, that that is all they had, that it was the best we had, anyway, and they had to keep saying it was satisfactory when they were writing these memos prior to June, 1954 and into the spring of 1955 because we didn't know whether we were having any bids until the fall of 1955, rather, September of 1955.

We never had been able to get one before, because nobody had the nerve to the invest the necessary money to equip this new business and go into competition with this Parmelee Transportation Company.

They made a big fuss about Mr. Keeshin buying this equipment on June 2nd before the committee had
2283 even acted on June the 3rd. Well now, Mr. Keeshin, according to the testimony here, made that perfectly clear.

The railroads had asked him at the May 19 meeting, "When can you take over?" He said, "I would like to have 90 days to get things organized, but if I have to take over, I will take over right away."

Then they came to the meeting on June 3rd before they were ready to vote, and they sent for Mr. Keeshin and said, "We want to have a little further talk with you about this take-over business. Suppose if you get this contract and the Parmelee company just pulls their stuff off the street the next morning when we notify them, when can you give us this service? We need the service."

Mr. Keeshin said, "I will give it to you the next morning if I have to, if I have to hire automobiles in this town to transfer the passengers until I can get my equipment."

He said, "In anticipation of that happening, I have placed an order for 'X' number of station wagons," whatever number it was, "to perform this service. I already have the trailers and so on from my other industry, and if I need them I can use those for a while, but
2284 I have ordered these station wagons," and they were a little surprised.

He said, "Don't let that bother you at all. I don't want you to be concerned about it, and it isn't to have any influence with you whatever about awarding this contract, but I ordered these station wagons, because there is a threatened steel strike, and if that steel strike occurs

then I can't get the equipment necessary to fulfill my obligation to you, and I am taking the chance, and if I do not get the contract, I shall not be hurt any. I will be in the automobile business a few days, but I can sell these station wagons for more than I have paid for them, so don't you bother about that at all."

That was the whole thing about ordering these stations wagons. If there is anything sinister about that, then let them make the most of it. There isn't anything unusual about it.

2285 Now this is an important case, as Mr. McConnell says. I am not going to dispute that. All cases are important.

This one involves a lot of money, but that doesn't make a case any more important than one that involves little money. A case that involves $100 to one man may be more important than a case that involves a million dollars to another.

The case is important, as all cases in court are important, and certainly in the Federal Courts. The important thing about it is that their whole case is built on suspicion, innuendo. In spite of the effort of his Honor to control the situation and keep the case within bounds that he has established, they kept putting questions to witnesses, Mr. Freeman did, carrying implications, innuendos, insinuations.

All of them were stricken, but the jab was there. The purpose was obvious, and that was to raise suspicions in your minds.

Now the Court is going to instruct you that you have got to decide this case on the evidence that has been admitted by the Court; not evidence offered. Not evidence offered, but evidence that was received by the Court.

2286 Anything that was rejected you must remove from your mind.

Now that is asking a lot of lot. As I observed, I think in your presence one day before the Court here, that when you drive a nail in the barn door, you can pull the nail out but you can't do anything about the hole. The Judge said he would use a little putty on it. Well, he probably would, but there is still going to be a hole there, and you are going to find the putty if you look hard enough.

Anyway, the wound is there, and the purpose was to create a wound, asking these improper questions and affronting the Court's rulings.

Now, we want this case decided on what is before you, not on suspicion. We haven't created any suspicion. We haven't asked you to guess at anything. It is all here.

It is serious business. You can understand it would be a tragic thing to find that these railroad executives, whose business it is to serve their patrons, that they made a contract against the public interest. In other words, that they started out with the idea of in-
2287 juring the people they have got to depend on.

Of course, they didn't. I join with Mr. McConnell in saying that because you have been sworn as jurors doesn't mean that you have to park your brains outside, nor do you have to ignore all of your experiences in life.

Put yourself in the position of these railroad executives. You know from your experience in life that they would not have even thought of doing anything that would be an injury to the public on whom they must depend for their business and their livelihood. Of course, they were trying to serve the public interest. Of course they were trying to improve this service. They couldn't have had any other objective.

Certainly there was policy involved. What was the policy? The policy involved was that if we turn down Keeshin's bid this time, even assuming they are even or

close to even, if we reject his bid this time, we are in the throes of the Parmelee Transportation Company for the rest of our lives. Nobody will ever bid again, and we are stuck from now on.

2288 That was a serious policy, and any executive of any railroad, after weighing all these factors that were to be weighed when it got up to the top where the dec ion had to be made, who had voted against this proposition of Keeshin's and had accepted to continue under the circumstances with Parmelee, after the treatment they had been receiving in this matter of jacking up the price all the time, would have been doing a terrible disservice to their own companies in the first place, and, incidentally, to the public, in that they were getting better service.

2289 Now what they were buying was service. A service that cost you $1.20 may be a much more expensive service than a service that cost you $1.27. The service they were buying was service to their patrons, and if they were getting more for their money, then they were getting a cheaper service.

So even on that score, even if we are only going to talk about the price, the weighing of the two coupons, we would have the benefit in favor of the one that guaranteed the better service.

All the rest of these things have nothing to do with this contract. Pickup and delivery service was merely a matter of private contract. If you lived out here somewhere, had a trunk that you wanted brought down to the depot, then you called the Parmelee service in those days, and now you would call the Keeshin service.

You would say, "I have a trunk that I want to bring down to the station," and you would pay the transfer charge.

The railroads have nothing to do with it. The railroads didn't pay it. The railroads made no contract about it. The tariff that was charged for handling this was changed from time to time. We have no evidence in this
2290 record of what the various changes were, but, it was changed from time to time, as all other prices are changed from time to time.

Of course, prices have gone up in the last few years in this service, as they have in other things, but that has nothing to do with this lawsuit.

The question here is whether this contract that was made was in the public interest. Now that takes into consideration a lot of imponderables. It is impossible to weigh it like you would weigh a sack of potatoes. You have got to take into consideration all of the elements that are involved.

You have got to take into consideration that here is a service that Mr. Keeshin is providing through this Railroad Transfer Service, Inc. That service has been continuous. Mr. Padrick testified that in all of this five years, the subject of whether there would be a continuity of service has not even been raised. There has never been any discussion of the subject.

They had to go through that thing year after year with Parmelee and wait two or three months after the contract expired to know whether they were going to have any service at all or not.

2291 Mr. Padrick said, "In all these four and a half years, the subject hasn't even been mentioned."

Now it seems to me that all things balanced and all things considered, and obviously we must consider in any decision we make in life, all things considered, certainly the public interests were not hurt. The public pays none of this transfer charge. It is all paid by the railroads.

The only way the public could be hurt is on some of these fringe things on one side or the other. Well, we haven't got enough evidence on that subject to even form any conclusions because we have confined ourselves in the main to the issue at stake here.

The railroads started out to let the contract for inter-station transfer service, which is the thing they buy and pay for. The rest of it they don't. The railroads have no control over the rest of it. Obviously the railroads want these other services to be good services because, in one sense of the word, their patrons are interested in having the knowledge that these other services are available. But it isn't the service the railroads provide.

They don't go out to your house and pick up a 2292 bag and bring it downtown, but they want to have somebody they can depend on to recommend. So when Parmelee was in the business, they recommended Parmelee. When Keeshin was in the business, they recommended Keeshin. If anybody else was in the business, they would recommend them, I suppose.

These things are all fringe considerations. They are all without any controlling condition one way or the other.

I join again in Mr. McConnell's statement that this is important. It is not something we want to just sneeze off. It is a serious thing. There could be nothing more serious than to blacken every executive of every railroad in this community by saying that all these 21 railroads, all the men who made this contract with Keeshin, or even all the six that were representing the 21 in the sub-committee, were so derelict in their duty, were so unconscious of their responsibility to the public as to make a deal or a compromise which had a tendency to injure the public, much less one that that did injure the public.

Ladies and gentlemen, there is no evidence in this case that shows that the public has been injured; and certainly

all the evidence in the world to show that they have
2293 got a stable service, a continuity of service, equipment that anybody can be proud of, and that the service is good and that there has never even been any complaints about it.

Thank you.

2294 THEREUPON MR. McCONNELL ADDRESSED THE COURT AND JURY IN FURTHER ARGUMENT ON BEHALF OF THE PLAINTIFF, AS FOLLOWS:

By Mr. McConnell: If the Court please, ladies and gentlemen of the jury, I am not going to engage in any characterization of Judge Thompson's argument. I will get right to the reply to both counsel.

First, Mr. Meserow told me that I was all wrong; he told me that his arithmetic was better than mine.

I went through this record and put down every item that was testified to on their equipment, and it was $166,900. I am off $900. That is how much I am off. That is a fact; that is the evidence.

Now they talk about the $500,000 that Parmelee was to put up as if it was something that didn't exist. I have read to you people letters where the railroads have stated that one of the reasons they wanted to deal with Parmelee was because of their financial integrity.

There was never any claim in all these years, until Judge Thompson gets up here and testifies himself, never
any contention that Parmelee wasn't a company of
2295 integrity.

Now I want to go right to the heart of this thing. There is a lot of talk, he says, about contracts. I cross-examined Mr. Padrick when he was on the stand, and you recall what he said.

I said, "Did you have a contract from year to year?"

He said, "We had a contract that could be terminated at any time, week to week, day to day."

Those were the limitations within which we worked, in negotiating our labor contracts, in dealing with the railroads. They knew it; we knew it. All of those things that he has discussed here this afternoon were discussed prior to January 7, 1955. After that discussion, after all of those things had been raised and talked about, and they weren't raised in the evidence the way Judge Thompson raises them. He has given you a very, very colorful account of conversations, verbatim, which never happened.

Chairman Padrick, who was the chairman of the committee, on January 7 advised the lines present that:

"It was the view of the committee studying the
2296 transfer arrangements that a change in operators should not be considered unless, say, a bid of $1.10 or $1.00 including baggage was submitted by some transfer company."

Now he tries to explain that away by saying that if he didn't write a letter like that, they might lose some bids. They already had the bid of the Keeshin Company. As Judge Thompson so meticulously pointed out to you, that bid was in by December 15, 1954, and they already had it.

Now, that isn't the explanation for this letter. The explanation for the letter is here the chairman of the committee had made an investigation, and they came up with the answer, and that was their position all the way through, as I will show, until May 19th. There was never any variation from it. All the rest of this talk which you have heard in this argument never existed until this lawsuit.

He told you there there were all sorts of rate changes, and that was the thing, the big bugaboo of the railroads.

There were three. I said there were three, unless you want to go back to the depression time when we
2297 voluntarily went down to seventy-five cents to help the railroads. We went from eighty-five down to seventy-five and back to eighty-five cents. It was originally eighty-five cents. The change was in their favor, and it went back to eighty-five cents. That was in 1942.

In 1948, it went to a dollar. That was one change. In 1952, it went to $1.05. That is two changes. In 1954, it went to $1.20, with a retroactive provision in it and a further negotiation, an escalator clause that with each three-cent raise in wages, they would increase the coupon rate one cent.

That was all one negotiation. That was all one change. There were just three. I said there were three, and there were three. I haven't distorted this record, as I am charged with doing.

2298 Now the next attack he takes here, he spent 12½ minutes of your time discussing this escalator clause on the rate going up as the coupons went down; less business, higher rate.

You know, we all know, that that went out in the May 19 meeting. There wasn't any question about it. There is no dispute about it. The railroads objected to it, and it went out. We spent 12½ minutes here discussing something that was withdrawn from our proposal; never in it at all.

Now why spend 12½ minutes on something that hasn't anything to do with the lawsuit unless you are trying to hide something else? I say that this talk about the escalator clause and the wages and the protocol of the railroads, and all that sort of thing, is to try to let you people forget and to obscure from your view the fact that the things that are being urged now were not urged at the time, currently with these discussions, when they were talking.

Now Judge Thompson talks about the presidents and the heads of the lines who are responsible for these great decisions in the railroads. But he isn't talking about that sort of thing here.

If you remember the evidence in this case, 21
2299 railroads appointed a committee. These people were committee members that were making these decisions. True, true, they came from the six railroads, but they were appointed to this committee, and it was only after they had given great consideration and made all their investigations as a matter of policy that these presidents got in, and they got in on a matter of policy which hasn't anything to do with the evidence here.

He says I haven't any right to have you people infer what happened. I have a right to have you people infer what happened when he puts down evidence here to negate what they were doing in this case.

I say that evidence is not true. I charged it then. My cross examination showed my attitude towards it, and those stories did not stand up on that cross examination. Why? Because they were inconsistent with the memoranda and the facts that were stated and the things that were being considered at the time.

This wasn't a case of the railroad president being on the committee. In the absence of something intervening
here, this committee would have taken care of this
2300 in normal course. How would they have taken care of it? We don't have to speculate on that. I concur with Judge Thompson in wanting you to look at this schedule, which is attached here to this Plaintiff's Exhibit 5.

He has got something in here about books, transfers two daily as against four daily. They describe it as 7 and 12-passenger limousines, what he calls taxi cabs—no

good, he says. That he has got, "Books will be audited by reputable CPA firm each year and open for railroad inspection." That is under Keeshin's proposed contract.

That was before them. Everything he has talked to you, you will find here on this schedule, showing it was before them.

Here is the comment, here is the verdict, with all of those facts before them. I am referring to the letter of May 27, 1955 from Mr. Small to Mr. Feucht.

> "It is the view of our passenger people, and I understand the same view is held by the committee members from the other railroads, that Parmelee should be awarded the contract because of their
2301 years of experience, their financial integrity, and the fact that they have given us a definite maximum of $1.25 per coupon after the fourth year of the contract."

There is a skilled, trained analysis, free from any outside influences at that time, and reporting upon what the committee members said.

That is the case in a nutshell. All of these things that Judge Thompson has spent your time on were before these committees at that time, and something else happened. Something else.

Now he says we blackjacked them in every way. How did we blackjack them? The price of a postage stamp, he says, two cents. Well, I am not going to minimize those coupon rates because it was enough to talk about in these negotiations. But they were talked about, and we got nothing from the railroads that they didn't agree to, and we got three coupon rate changes, so far as this record shows, in 102 years. That is a great big picture of blackjacking.

2302 I said on this contract that we couldn't make labor arrangements except on a year-to-year basis.

How else could we do it when they wouldn't give us a contract? How else could we do it? There was no other way to do it.

Keeshin could, with a five-year contract. I don't know, the record isn't clear to me, whether he had a contract then or was just assuring them that he could get a contract, but if he had a five-year contract, he had something to negotiate the wage scale with.

Now, we had a long dissertation about the antecedents and the family tree of the Parmelee Company. Look, Judge Thompson says, you aren't children. You didn't come in here shorn and bereft of your reasoning.

We are opposed by twenty-one railroads who have got their tentacles all over this United States and the seas and other countries. Talk about an octopus. He is trying to make you believe that this isn't a little man's suit.

Just use some of that common sense. How far do you think you or I would go fighting this octopus? We have got to have some money, and we have got to have
2303 something back of us to stand a litigation like this.

It is a little man's suit, and we are fighting it for him. If you brought your intelligence with you into this jury box, you will know that this is a fight of a little man for a fair chance. That is what this lawsuit started out as, and that is the way it ends, and that is why it is important.

He says that these railroads will be blackened. They put us out of business, a hundred and two year business, a credit to this great community.

The public benefited by that? How can you find on this evidence that the public was anything but injured by ending that service, with all peripheral service. Everything we do is peripheral, doesn't amount to anything; it is peanuts.

It was service rendered to the public, and when we were stopped from doing it, it ended. Of course, the public was injured. The public has been injured at every step of the way.

Of course, we went out and got evidence. How else do you try lawsuits? What did Judge Thompson do? He sends somebody over there to get these people out
2304 of the railroad stations; their boss is going down and getting them to come in here and testify. This fellow telling you he can remember five years ago that he wore a brown suit and a brown pair of shoes. Can you remember five years ago what you wore or what you ate or what you did? I can't. There isn't anybody in this courtroom that can.

He says that is the kind of cross examination you use when you haven't anything else to use. It was pretty good cross examination, if I may say so myself, when a witness gets up there and tells you people that he remembers what suit he wore five years ago on May 20th—

By Mr. Thompson: December 20th.

By Mr. McConnell: (Continuing) Or December 20th. You see, I didn't even remember the dates, and I have got a pretty good memory, and he can remember the shoes that he wore and the suit that he wore,

I don't think I should be criticized for that cross examination because you people know that he couldn't possibly remember.

The other fellow was running two blocks out in the yards, squinting out through his little cubicle up
2305 there every minute of the day. He couldn't have been.

Nobody denied Mr. Krock—the crack in the crock of Mr. Thompson's jovial remark—nobody denied his testimony who was there on the day that you could believe.

He made a memorandum of it. He had a reason to observe it.—

By the Court: Three minutes time, Mr. McConnell.

By Mr. McConnell: As Mr. Thompson said, he was getting evidence. He couldn't have a better reason to be accurate. Oh, yes, we blackjacked the railroads.

Now, let's get to this big syndicate. Parmelee Company is one appendage to it. I don't care how large it is. I don't care how much money Mr. Markin has. He isn't on trial here. He is trying to fight a lawsuit and a good one and the issue here—and that was brought in here to prejudice you people, to make you think that we are the big octopus. How ridiculous, against all of these 21 railroads we are the big octopus, with a little transfer service going back and forth between these stations.

2306 There is no evidence that we have a monopoly of the transfer in this town or ever had it. The best evidence that we didn't have it, and this I insist is incontrovertible, nobody can ever deny it, is that without any preparation, without any consultation, without any if, and or but, and not even with a fair hearing, without even giving us the benefit of viewing our bid on the merits, they discontinue our service and take Keeshin's.

How better could you ever disprove a monopoly? And if that is a monopoly, it is the worst monopoly I ever heard of. We didn't have anything remotely resembling a monopoly. They could come in and bid against us any time, and they did. They solicited bids, and they got them.

This big blackjacking — their own railway agency which they own, one of their appendages to their octopus, the Railway Express Agency, they couldn't meet our bid that we were then charging $1.22. They couldn't meet it. They wanted 15 per cent guaranteed profit.

Some story of blackjacking, I would say. But old Judge Thompson gets up here and he just waves these
2307 claims right out of court; just nothing to them.

Then he says that there wasn't anything about this pickup and delivery service. Well, it is right in the contract. If you take the contract and read it, you will find out about it. The price is in there on schedule, and it is fixed, just like I told you it was. You will read it. It is all there.

By the Court: Your time is up.

By Mr. McConnell: I don't know anything more that I can tell you about this case. I have tried to present it in the best way I know under the limitations imposed upon me.

I said at the beginning, and I say now, and I have said it all the way through, that this is a case of great, great public importance because until we get past this hurdle, we can't try an anti-trust case in this court, and that is the biggest issue ever presented to a jury in this Cook County of Illinois, in its history, believe me.

You hold the key to our prison. Only you can unlock it, and we have given you the evidence to do it. We have given it to you beyond question. We have given you
2308 uncontradicted evidence that this service was impaired, that there was less of it when they got the contract, and the public had to be injured.

2309 There couldn't anything else happen but the public be injured, and I ask you with all the sincerity that I can muster to consider what effect your decision is going to have, not only on the litigants in this case or the money involved, but what is going to happen if this can be put as a barrier to an anti-trust suit as we have in this case.

I thank you very, very much.

And Thereupon The Court Charged The Jury As Follows:

By the Court: I am now going to read to you ladies and gentlemen the instructions in writing. You will take them with you into your jury room, and you may refer to them if you wish, because I can't possibly expect you to remember them as I read them to you.

The Court instructs the jury that preliminary to your being accepted and sworn in as jurors in this case you were examined by the Court and counsel as to your competence and qualifications to act as jurors in this case.

As a part of such examination each of you 2310 answered all questions asked of you. Your answers showed that you are competent and qualified to act as jurors in this case, and the parties to this suit accepted you as jurors on the faith of your answers. The answers you then made to said questions in regard to your competency, qualifications, fairness, lack of prejudice and freedom from passion or sympathy are as binding upon you now as they were then and should so remain until you are finally discharged from further consideration of this case.

It would be improper for you to disregard the answers which rendered you competent as jurors.

You are instructed that while it is the duty of the Court to declare the law and the duty of the jury to be governed by that law in its consideration of the evidence, it is on the other hand your exclusive province and right to pass upon the facts in the case and upon the credibility of witnesses, that is whether or not the testimony of the various witnesses should be believed.

With those functions the Court has nothing whatsoever to say other than to endeavor to see that only proper

evidence is permitted to appear before the jury for its consideration.

2311 It is not the intention of the Court to influence in any way your judgment as to the facts in this case. If, therefore, during the progress of the trial you have gathered any impression from anything which the Court may have asked of a witness or may have stated in its rulings or in the course of discussion of or with counsel with respect to the facts in this case or as to the weight of any evidence or as to the credibility of any witness, you should disregard that impression and base your verdict entirely upon your own judgment as to what the evidence established.

2312 This is a civil suit, and in the determination of your verdict you are the sole judges of the facts. You must take the law from the Court as laid down in these instructions. Every instruction read to you is given by the Court, and it is your duty under your oath as jurors to know what the instructions are before you bring in your verdict and to honestly and impartially apply to the evidence the law as laid down in these instructions.

These instructions constitute one connected body and series and should be so regarded and treated by you. You must not pick out any one instruction and disregard others, but you must take all the instructions together as the law.

You are the judges of the credibility of witnesses and of the weight to be given to the testimony of each. You must receive and consider the testimony of each witness in the light of all the evidence applying thereto the law as given to you in these instructions. As to each witness, in determining the weight to be given his testimony, you have a right to consider his appearance on the stand, his manner of testifying, his apparent candor and

fairness, his interest or lack of interest in the
2313 result of this case, his apparent intelligence or lack of intelligence and all the other facts and circumstances proved on the trial.

If the jury believe from the evidence that any witness in this case has knowingly and willfully sworn falsely on the trial to any material matter material to the issues in this case, then the jury are at liberty to disregard the entire testimony of such witness except in so far as it has been corroborated by other credible evidence or by facts and circumstances proved on the trial.

You are instructed that the Court has limited the issue to be tried before you to the public injury. That is to say whether or not the public has sustained or suffered injury as a result of the award of the 1955 transfer contract to the defendant Railroad Transfer Service, Inc. or by failing to award such a contract to plaintiff Parmelee Transportation Company.

The Court instructs the jury that on the question of public injury you may consider, among other things, the comparative service provided by Parmelee and the Railroad Transfer Service, Inc. in connection with the interstation of passengers and baggage.

2314 The plaintiff is required to prove its case by the greater weight of the evidence, and if it has not so proved its case by a preponderance or greater weight of the evidence, or if the evidence is evenly balanced so that you are unable to say on which side is the greater weight of the evidence, or if the greater weight of the evidence is in favor of the defendants, then in any such event your verdict should be in favor of the defendants.

The preponderance of the evidence in the case is not alone determined by the number of witnesses testifying to a particular fact or state of facts.

In determining on which side the preponderance of evidence is, the jury should take into consideration the number of witnesses testifying to a particular fact or state of facts and they should also take into consideration so far as shown by the evidence the opportunities of the several witnesses for seeing or knowing the things about which they testify, their conduct and demeanor while testifying, their interest or lack of interest if any in the result of the suit, the probability or improbability of the truth of their several statements, in view of all the
2315 evidence, facts and circumstances, proved on the trial, and from all these facts and circumstances and a full consideration of all the evidence, determine upon which side is the greater weight or preponderance of the evidence.

2316 The Court has limited the issue before you to public injury. Other issues must not be considered by you. All questions, remarks, innuendos and insinuations by counsel which have been ruled out and stricken from the record, regardless of how often they have been repeated, are to be disregarded by you.

You are further instructed that none of the parties hereto, either plaintiff or defendants or their respective stockholders or officers as such or in such capacities are part of the public to be considered by you in your deliberations as to public injury.

The Court instructs the jury that plaintiff must prove its case by a preponderance or greater weight of the evidence, and if the plaintiff does not prove its case by a preponderance or greater weight of the evidence, you should find the issues in this cause in favor of the defendants.

Your verdict in this case must be based upon the evidence. You must not speculate or conjecture or guess as to the facts which plaintiff is required to prove in this

case. If your finding as to the facts which plaintiff
2317 is required to prove in this case can be made only upon conjecture or speculation or guess as to what the facts are, then you must find the issues in favor of the defendants.

You are instructed that this case must be decided upon the evidence under the instructions of the Court and not upon the statements or implications of counsel outside of the evidence and unsupported by evidence. You are not to consider any document, any documentary evidence which has been offered but which has not been admitted by the Court, nor are you to consider any answers made by witnesses which have been made and stricken out by the Court.

You are to decide the issues solely upon the evidence which has been admitted by the Court, finding from the evidence the facts and applying to the facts the instructions as to the law given by the Court.

The evidence and the law alone must govern your verdict.

You are instructed that if you believe from the evi-
dence that the railroad companies have paid and are
2318 paying for the service rendered by defendant, Railroad Transfer Service, Inc., and that they have redeemed the transfer service coupons collected by Railroad Transfer Service, Inc., out of their own funds, if you further believe from the evidence that said payments have not resulted in an increase of rates to the passengers, then and in that event such payment in the redemption of said coupons are not a proper element in the determination of the issue herein.

You are further instructed that as a matter of law an exclusive contract with one transfer company executed jointly by the Chicago Terminal Railroads does not constitute a violation of the Anti-trust Laws. In your con-

sideration of the issue of whether there was a public injury, you are not to consider any issue of the validity of that contract.

The Court further instructs you that under your oaths you should not allow sympathy or prejudice to influence you in the least in finding your verdict in this case. In your deliberations you should not be influenced by anything other than the law and the evidence in the case.

2319 You are instructed that in order to answer the special interrogatory submitted to you, you must determine whether the selection of Railroad Transfer Service, Inc., rather than Parmelee Transportation Company to perform the interstation transfer service in Chicago was reasonably calculated to prejudice the public interest and whether by reason of that selection there has been an appreciable lessening of service to the public or the public has been deprived of a service of over-all superiority.

For your verdict you will answer the following interrogatory yes or no and sign your verdict:

> "Has the selection of Railroad Transfer Service, Inc., rather than Parmelee Transportation Company to perform the interstation transfer service for the railroads terminating in Chicago resulted in injury to the public?"

I give you one form of verdict which reads:

> "We the jury, answer the interrogatory as follows: Has the selection of Railroad Transfer Service, Inc., rather than Parmelee Transportation Company

2320 to perform the interstation transfer service for the railroads terminating in Chicago resulted in injury to the public?"

The answer is yes or no.

Then you will sign your names, as I tell you.

I want to say to you folks that I have enjoyed your service here. I am grateful for your kindness and your service and your cooperation. You will now retire. You will have all the exhibits with you. You will have these instructions with you.

Your first official act will be your election of a foreman who will preside over your deliberations, and when you will have elected that foreman and when you have reached the answer, the foreman will please sign his or her name first on the first line and the rest of you will please sign your names next following after the foreman.

The two alternate jurors may now be excused. Thank you very kindly for coming in and helping us. You are very kind.

(The two alternate jurors were thereupon excused.)

2321 By the Court: (Continuing) Before you get into your jury deliberations, you can relax, wash up, and sit around. You will have dinner served to you under my deputy marshal. If you want something, he will be glad to serve you and take care of you. And again thanks a million.

Swear in the staff.

(The Marshal was thereupon duly sworn.)

(Thereupon the jury retired to consider of their verdict.)

(The following proceedings were thereupon had outside the presence and hearing of the jury:

By the Court: We will be in recess. The lawyers may go back to their respective offices. My bailiff or my Marshal will call them if something happens. I will be available. I will be around somewhere where I can be reached.

I don't want a sealed verdict here, because it is too important a matter, so somewhere around ten o'clock or ten-thirty we will decide as to what we are going to do next, but until then you be in your offices or leave your numbers wherever you can and we will reach you,
2322 and nothing will happen until you get here or somebody from your office.

(And thereupon at 5:20 o'clock p.m. of said day, May 10, 1960, a recess herein was taken until 10:00 o'clock p.m. of May 10, 1960.)

2323 • • (Caption—No. 56 C 323) • •

Chicago, Illinois,
Tuesday, May 10, 1960,
10:00 o'clock p.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff,

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad Company;

2324 Mr. Philip W. Tone,
on behalf of defendant
railroads.

2325 And thereupon the following further proceedings were had herein:—

(And thereupon the following proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: Have you folks reached a verdict?

By the Jurors: Yes.

By the Court: Please hand it to the Marshal.

By the Clerk: "Verdict: We, the jury, answer the interrogatory as follows:

"Has the selection of Railroad Transfer Service, Inc., rather than Parmelee Transportation Company to perform the interstation transfer service for the railroads terminating in Chicago resulted in injury to the public?"

The answer is "No," signed by the jurors.

By the Court: Thank you very kindly. You have been a grand jury, and I appreciate it very much and hope to see you some day again. Have a nice evening and thank you. You are excused from further service.

(And thereupon the following proceedings were
2326 had outside the presence and hearing of the jury)

By the Court: I am now going to hold Mr. McConnell and Mr. Freeman in contempt of court, and I will make it returnable two weeks from today—direct contempt.

By Mr. McConnell: Your Honor, I don't know whether I have any right to ask this or not.

By the Court: Beg pardon?

By Mr. McConnell: I have transportation for Europe next week.

By the Court: I will wait until you come back. I am not going to interfere. It is not that urgent, but you cannot do what you did in this case, neither of you. You made direct attacks on the Court unwarrantedly, and the record shows it.

By Mr. Freeman: The record doesn't show that.

By Mr. McConnell: I would ask that it go over until I get back.

By the Court: Yes; I am going to let it go over, and I am going to put it over to the same time I sign the Decree I have asked for. There is no emergency about it, but I am going to make the record.

By the Clerk: Do we enter the verdict and enter judgment on the verdict?

By the Court: Judgment on the verdict.

2327 By Mr. Meserow: If your Honor please, with respect to the two defendants' counterclaims, can we have an order entered putting those over to the fall?

By the Court: That will be continued to the same time when I sign the final Decree dismissing the rest of the issue that I recited several times for the record. I want a complete record so the Court of Appeals will have it on all issues, both on this one and on the others.

By Mr. Meserow: Is your Honor setting a date for the signing of the Decree?

By the Court: When do you come back?

By Mr. McConnell: The 28th of June.

By the Court: All right; make it on the 30th of June.

By Mr. McConnell: Yes, your Honor.

By the Court: That will be the order.

(Whereupon an adjournment was taken in the hearing of the above-entitled case to the 30th day of June, A. D., 1960, at the hour of 10:00 o'clock a. m.)

2328 United States of America
Northern District of Illinois
Eastern Division

IN THE UNTED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from
2329 1 to 2327 in a full, true and accurate transcript of the original shorthand notes of all the proceedings had upon the trial of the above-entitled cause, on April 21, 22, 25, 26, 27, 28, 29, and May 2, 3, 4, 5, 6, 9, 10, 1960, before the Honorable Julius H. Miner, Judge of said Court, and a jury.

/s/ Roy E. Fuller
Roy E. Fuller
Official Court Reporter
United States District Court
Northern District of Illinois

May 19, 1960

2330 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Thursday, June 30, 1960,
10:00 o'clock p. m.

Court convened pursuant to an adjournment (from the last prior hearing herein on May 10, 1960).

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. Herbert B. Lazarus,
on behalf of the plaintiff;

Mr. Albert J. Meserow,
on behalf of the defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the defendant
The New York Central Rail-
road Company;

Mr. Floyd Thompson,
Mr. Philip W. Tone,
on behalf of defendant Rail-
roads.

2331 And thereupon the following proceedings were had herein:—

By the Clerk: 56 C 323, Parmelee Transportation Company v. John L. Keeshin, et al., for entry of judgment on the verdict and all the issues in the cause, and for imposition of sentence of Mr. Thomas C. McConnell and Mr. Lee A. Freeman for direct contempt of court.

By the Court: First, I have prepared a 35-page opinion in the Parmelee case, and I am filing it now. It is a memorandum opinion, and I have copies here. Here are two for the plaintiff, and I have only one for the defendants. I appreciate I may have to make copies if I get any more demands.

I appreciate somebody can make stencil copies, so let me do it. I will make them from the original. I think I have one extra copy in my chambers.

By Mr. Thompson: As far as the defendants are concerned, we will make our own unless you do have them.

By the Court: I will make probably a hundred copies and you can have as many as you need, so let me do it so everybody can have them and not duplicate
2332 it.

Next will be the final judgment—

By Mr. Thompson: We submitted a draft.

By the Court: You submitted a draft and I made some changes.

By Mr. Thompson: We submitted a draft and served it on the others.

By the Court: I made some important changes in there in so far, primarily, that my judgment was that your order provided for dismissal of the complaint in its entirety, and I limited it to any and all issues, if any there be, independent of the issues adjudicated by the jury.

I am now signing it.

By Mr. Thompson: We didn't provide for dismissal of the complaint. We provided only for the equitable issues. We provided for judgment on the law.

By the Court: I changed that because I felt that ought to be clear. Here is one copy of the final judgment for the plaintiff and a copy for the defendants.

On the question of the contempt proceeding—Did I give you a copy of the original final judgment?
2333 By the Clerk: I have the original here.

By the Court: I have yours, on which I made my changes.

On the question of contempt, I have prepared an order which I am now signing. I will give you each copies.

I am sentencing each of the defendants to ten days in the County Jail, with this proviso: I have no ill feeling in the matter. The court was seriously hurt in this matter on the procedure. The specifications are in here, and I will read them if you want me to.

I will enter my own motion for suspension of it, if you folks will decide to enter or file a petition of retraction and apology.

I have no malice in my heart. I cannot permit this to go unchallenged with all the seriousness at my command. I don't want the punishment to be unduly, but the court is entitled to that much consideration, and you must determine between now—I will give you plenty of time. I will continue it until court's reopening, unless you have other plans. I have no objection to between now and September, say the 15th or latter part of September, you can 2334 decide if you want to.

By Mr. Thomas C. McConnell: That is perfectly all right.

By the Court: If you want to file the petition or take an appeal.

By Mr. McConnell: So there is no final order entered this morning?

By the Court: I have got to enter it.

By Mr. Freeman: You are suspending the sentence.

By the Court: I will enter a motion to vacate and there will be no other action taken on it until you decide which way you want to follow it.

By Mr. McConnell: That is perfectly all right.

By the Court: Just one second. Did I give you copies of it?

By Mr. Freeman: No, you did not. We ought to have two.

By the Court: I am signing the original order now. I don't mean to be technical about it. If anything comes up in your minds that needs clarification in conjunction with and in conformity with my plan of doing it, I will come down at any time and protect the record on it completely.

By Mr. McConnell: My only question about it—
2335 Well—

By the Court: Pardon me?

By Mr. McConnell: I say my only question about it is whether it is a final order entered today.

By the Court: I am entering a final order today with a motion to vacate. It is the court's order. If you want to make your own motion, I will be glad to entertain that, but I am doing that and I am giving you a lot of consideration.

I don't want to—the court has got to protect itself against the charges, the specifications that I have in there. There are four against Mr. Freeman and three against you, specific with reference to the pages. All in all, I would rather have the apology than I would the sentence, much rather.

All right. Call the next case.

Did I give you a copy? Do you want a copy of that, gentlemen?

By Mr. McConnell: Can we have five days in which to file objections to the order on the main case?

By the Court: Oh, yes.

By Mr. McConnell: I think the rules allow it.

By the Court: If you want to do that, whatever
2336 you want to do is O. K. with me. You can have the same order provide five days to file objections, to perfect your record, and take your time on determining what course you want to follow.

Five minutes recess, please.

2337 United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 7 is a full, true and accurate transcript of the original shorthand notes of all the proceedings had upon the hearing of the above-entitled cause, on June 30, 1960, before the Honorable Julius H. Miner, Judge of said Court.

/s/ Roy E. Fuller
Roy E. Fuller
Official Court Reporter
United States District Court
Northern District of Illinois

June 30, 1960

762

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *
(May 3, 1960)

This being the day to which this cause was continued for further trial the parties come by their attorneys and the jury also come and the trial proceeds, whereupon defendants' motion that the Court direct the jury to return a finding for the defendants at the close of plaintiff's case is overruled and during the hearing of evidence for the defendants the hour of adjournment having arrived it is

Ordered that the cause be and hereby is continued until

May 4, 1960 at 10:00 a.m., and that the jury be and hereby are permitted to separate until that date and hour.

763 May 10, 1960: Filed Given Instructions

799 VERDICT

We the jury answer the interrogatory as follows:

Has the selection of Railroad Transfer Service, Inc. rather than Parmelee Transportation Company to perform the interstation transfer service for the railroads terminating in Chicago resulted in injury to the public? No.

800

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

This cause being called for further trial the parties again come by their attorneys and the jury also come, and the motion of defendants for a directed verdict and for entry of judgment in their favor at the close of all the evidence is overruled and ruling thereon reserved, and the motion of plaintiff for a directed verdict at the close of all the evidence is overruled, also, and ruling thereon reserved by the Court, and it is

Ordered that counsel for defendants prepare proposed findings of fact and conclusions of law, whereupon
801 the trial proceeds and the jury having now heard all the evidence adduced for the parties, the arguments of counsel and instructions of the Court the alternate jurors are discharged from further service herein and the remaining jurors retire to their rooms with sworn marshals to consider of their verdict and during their absence it is

Ordered that the United States Marshall furnish one meal for the twelve jurors and one deputy marshal in

charge thereof, and afterward the jury return into open Court and render their verdict and on their oath do say:

"We, the jury answer the interrogatory as follows:

Has the selection of Railroad Transfer Service, Inc. rather than Parmelee Transportation Company to perform the interstation transfer service for the railroads terminating in Chicago resulted in injury to the public? No"

Therefore, it is

Ordered And Adjudged that the plaintiff take nothing from the defendants in this cause on the issue of public injury, and that the defendants recover from the plaintiff their costs and charges in that behalf expended, and it is

Further Ordered that the matter of the two defendants' counterclaims and the entry of the final decree dismissing the remainder of the issue be and they hereby are continued to June 30, 1960 at 10:00 A.M., and it is

Further Ordered that Mr. Thomas C. McConnell and Mr. Lee A. Freeman be and they hereby are held in direct contempt of court and that imposition of sentence be and it hereby is continued to June 30, 1960 at 10:00 A.M.

802

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

(May 12, 1960)

On the Court's own motion it is

Ordered that the orders heretofore entered herein on May 10, 1960, be and they hereby are amended to read and rule as follows:

803 This cause being called for further trial the parties again come by their attorneys and the jury also come, and the motion of defendants for a directed verdict and for the entry of judgment in their favor, at the close of all the evidence, is overruled, and the motion of plaintiff for

a directed verdict in its favor, at the close of all the evidence, is also overruled, and it is

Ordered that counsel for the defendants prepare proposed findings of fact and conclusions of law, whereupon the trial proceeds and the jury having now heard all the evidence adduced for the parties, the arguments of counsel and instructions of the Court the alternate jurors are discharged from further service herein and the remaining jurors retire to their rooms with sworn marshal to consider of their verdict and during their absence it is

Ordered that the United States Marshal furnish one meal for the twelve jurors and one deputy marshal in charge thereof, and afterward the jury return into open court and render their verdict and on their oath do say:

> "We the jury answer the interrogatory as follows: Has the selection of Railroad Transfer Service, Inc. rather than Parmelee Transportation Company to perform the interstation transfer service for the railroads terminating in Chicago resulted in injury to the public? No"

Whereupon, it is

Ordered that the matter of the entry of judgment on the verdict and on all issues in the cause be and it hereby is continued to June 30, 1960, at 10:00 A. M., the Court holding Mr. Thomas C. McConnell and Mr. Lee A. Freeman in direct contempt of court and it is

Further Ordered that imposition of sentence in re said contempt be and it hereby is continued to June 30, 1960 at 10:00 A. M.

804

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

MEMORANDUM OPINION

(June 30, 1960)

This is an action for an alleged violation of Sections 1 and 2 of the Sherman Act (15 U.S.C., §§ 1 and 2). Plaintiff is Parmelee Transportation Company, which performed the interstation transfer of passengers and their baggage between and among Chicago's eight railroad stations for many years prior to October 1, 1955. The defendants are (a) John L. Keeshin, who was a successful competitor of Parmelee for a new contract to perform the service, commencing on October 1, 1955, (b) Keeshin's company, Railroad Transfer Service, Inc., which he organized to perform the service after he had been notified he would receive the contract, (c) Hugh W. Cross, formerly a member of the Interstate Commerce Commission, 805 (d) the six railroads which comprised a committee chosen by the 21 railroads having passenger terminals in Chicago to consider the transfer problem and make recommendations to the railroads with respect to its solution, and (e) the presidents of four of the six railroads.

The complaint alleges, and the evidence shows, that 21 railroads operate passenger service terminating in Chicago at one of eight railroad stations. No railroad provides passenger service through Chicago. Thus, it is necessary for any through passenger arriving in Chicago by rail to transfer from one train to another and usually from one station to another. In order to provide a complete through service, the railroads provide transfer from one station to another for through passengers and their baggage, the outgoing line paying the transfer charge.

The evidence shows that early in 1954, as a result of a demand by Parmelee for a 19% increase in the coupon charge, the 21 railroads designated a committee of six of their number "to make a study of the transfer situation, including various types of operation that can be devised to definitely meet the needs of the public without increasing the cost to the railroads; report and recommendation to be made to Chicago terminal lines for consideration at a later meeting." (Proceedings of Meet-
806 ing, Chicago Terminal Lines, Jan. 29, 1954.) The committee chosen consisted of the six railroad defendants, being respectively the principal lines using the major terminals.

The evidence also shows that the committee representatives approached a substantial number of persons and firms which they thought were qualified and might be interested in rendering the transfer service, including John L. Keeshin, a substantial motor truck operator. The committee held meetings with the various prospective bidders. Eventually, by reason of lack of interest on the part of other bidders or their unwillingness to provide the kind of service the railroads thought was required, the field was narrowed to Parmelee and Keeshin.

Keeshin's initial written bid was submitted on December 15, 1954. He proposed to render the service during the first year for $1.20 per coupon, which was 2¢ per coupon less than Parmelee was then charging. (Parmelee had been granted an increase to $1.22 from the $1.05 rate that was in effect at the beginning of that year, following the demand for rate increase referred to above.) Keeshin proposed that in the subsequent years his coupon charge would be increased 1¢ for each 5¢ per hour wage increase he was required to grant his employees. To permit him to amortize the investment necessary to entry into the
807 business, he requested a five-year contract. On January 15, 1955, following an agreement covering wages

of drivers for a three year period, Keeshin modified his proposal by placing ceilings of $1.22 and $1.23 per coupon in effect for the second and third years, respectively. Keeshin also proposed, in his original proposal, to provide new equipment, to replace his passenger equipment every thirty months, to air condition his passenger equipment and to dispatch his vehicles by means of two-way radios. He also agreed to make his books available for inspection by the railroads at any time.

On March 19, 1955, Parmelee submitted its proposal to the committee Parmelee proposed to reduce its rate for the first year from the $1.22 it was then charging to $1.20, the same figure Keeshin had offered; to increase the rate in subsequent years 1¢ for each 3¢ wage increase Parmelee was required to pay its employees; and, further, to increase the rate in subsequent years 1¢ for each 1% decrease in the number of passengers carried. Parmelee requested an exclusive six and one-half year contract, in order to permit it to amortize its anticipated investment in new equipment.

On April 6, 1955, Keeshin wrote a letter amplifying his previous proposal and stating that, while he recommended that trailers be used to handle baggage and 808 that the railroads have their personnel load and unload stationed trailers as the more economical arrangement for them, he would be willing to continue the baggage handling system which had been in operation for many years with Parmelee. His letter also amplified various portions of his original proposal, but added nothing new in substance, except the assurance that his coupon charge was firm regardless of volume of passenger business.

On May 19, 1955, the committee met with Keeshin and Parmelee officials separately to discuss the respective proposals. Parmelee then withdrew its request that the

railroads increase the coupon charge 1¢ for each 1% decrease in passenger volume. However, Parmelee did not at that time put any ceiling on its charge for the second and third years, other than a ceiling of $1.25, which was applicable to each year of the contract period subsequent to the first. Parmelee did not offer air conditioning, radio dispatching or any schedule for equipment replacement, and declined to let the railroads see its books.

On May 20, 1955, Morris Markin, Chairman of the Board of Directors and principal negotiator for Parmelee, telephoned the chairman of the railroad committee, and advised him that Parmelee would place the following ceilings on its coupon charge: first year—$1.20; second year—
809 $1.22; third year—$1.23; fourth year—$1.24; and balance of contract $1.25. Markin confirmed this change by letter.

The committee met on June 3, 1955, and unanimously voted to recommend to the 21 railroads that the proposal of Keeshin be accepted. On June 13, the 21 railroads approved the recommendation. Parmelee and Keeshin were notified of the railroads' decision.

Subsequently, Keeshin formed defendant, Railroad Transfer Service, Inc., for the purpose of performing the transfer service and the railroads negotiated and entered into a five-year written contract with that company for the performance of the service, operations under the contract to commence October 1, 1955. Railroad Transfer Service has been performing the transfer service since that date.

The foregoing facts are undisputed. The dispute concerns the means by which the railroads were induced to reach their decision to award the transfer contract to Keeshin rather than to Parmelee.

Parmelee alleges that Keeshin induced Cross, who was then a member of the Interstate Commerce Commission,

to "influence, induce and persuade" the defendant railroads, and through them the 21 Chicago terminal lines,
810 to accept Keeshin's proposal for a five year exclusive contract instead of Parmelee's proposal for a six and one-half year exclusive contract. (Complaint, par. 31)

These allegations are denied by all the defendants. The defendants contend that the proposals of Keeshin and Parmelee were considered on their merits and that the Keeshin proposal was selected by the railroads in the exercise of their sound business judgment.

Plaintiff's allegations of public injury, apart from the assertion that Cross was disabled as a result of his alleged undertaking from adequately performing his duties as a member of the Interstate Commerce Commission (Complaint, par. 34(i)), are that the services performed by Railroad Transfer are "more costly to said railroads and less extensive and valuable than the services previously performed by plaintiff and which plaintiff had offered to continue to perform" (par. 33(f) and (i), 34 (d)), and that the travelling public will "ultimately" be affected by the alleged increased cost and will be "prejudicially" affected by the alleged decrease in the "quality or extent" of the service. (Complaint, par. 19) These allegations of public injury are denied by the defendants.

Plaintiff also alleges that it has been damaged by being deprived of profits in the sum of $6,400,000 "it would have earned" had it been awarded the contract. (Complaint,
811 par. 35.) Plaintiff seeks a judgment in this amount trebled, or in the amount of $19,200,000, and seeks an injunction against performance of the contract or continuation of the alleged conspiracy.

In addition to the foregoing allegations of ultimate fact, Parmelee alleges that the acts of the defendants constituted an

"unlawful combination, conspiracy and concert of action to eliminate all competition for contracts . . . to transport interstate passengers and their baggage . . ., to eliminate all competition for the rendition of pick-up and delivery services, to foreclose all future competition for such contracts and services, and to restrain and monopolize the aforesaid interstate commerce in violation of §§ 1 and 2 of the Sherman Act." (Par. 31)

Soon after the action was commenced, the defendants (with the exception of defendant Cross, who answered) filed motions to dismiss on the ground that the complaint failed to state a claim upon which relief could be granted. This motion was considered on briefs by Judge Philip L. Sullivan, to whom the case was then assigned, and overruled by him. The defendants who had filed motions then answered. Extensive discovery proceedings followed, during which thousands of documents were produced for inspection and thousands of pages of depositions were taken.

After discovery had been completed and after the first pretrial conference had been held before Judge Rob-
812 son, to whom the case was then assigned, plaintiff moved for a partial summary judgment holding the exclusive five-year contract which had been awarded Keeshin unlawful on the ground that it constituted, *per se*, a violation of the antitrust laws. This motion was considered by me on briefs, after the case was placed on my docket, and was overruled. The case was then set for trial.

In preparation for the trial, I reviewed the pleadings and briefs and other papers in the file and also certain pertinent decisions handed down after the briefs on the motion to dismiss were written. As a result of this review, I concluded that this might be an appropriate case for the operation of this Court's Rule 21, which implements

Federal Rule 42(b), *i.e.*, in which to order a separate trial of the separate issue of public injury. See *Marks Food Corp.* v. *Barbara Ann Baking Co.*, 274 F. 2d 934, 936 (9th Cir. 1960).

Shortly before the trial, the Court orally announced its views to the parties and asked that the parties present arguments to the Court on the question of whether a separate trial of the issue of public injury should be held. Both sides favored immediate trial of the entire case. Plaintiff opposed the separation on legal grounds, arguing that it was unnecessary for plaintiff to prove public injury as such; and defendants opposed the proposal on various practical grounds and on the ground that they desired to be vindicated by a trial on the merits. Not-813 withstanding the opposition of all parties, the Court concluded that it was in the interest of efficient judicial administration and in the interest of justice to try separately the issue of public injury.

Pursuant to the Court's order a jury was selected and impaneled to try the issue of public injury. Plaintiff and defendants introduced evidence on that issue. Plaintiff's position throughout the trial was that public injury was inferable as a matter of law from proof of a violation of the antitrust laws, that it was only necessary for plaintiff to prove a violation and that it was unnecessary to prove public injury as a separate element. On this theory, plaintiff made offers of proof of its entire case, including the evidence it claimed established a violation of the antitrust laws and some evidence in support of its allegations of damages.

Defendants severally moved for a directed verdict at the close of plaintiff's evidence, and their motions were overruled. Both plaintiff and defendants moved for directed verdicts at the close of all the evidence, and these motions

were overruled and the Court at the same time reserved its rulings. The issue of public injury was submitted to the jury by a special verdict which asked the jury to determine whether the award of the contract to Kee-
814 shin rather than Parmelee had resulted in injury to the public. The jury answered the question in the negative.

Public Injury

Unless a *per se* violation of the antitrust law is established, plaintiff is required to prove that the public at large has suffered or will suffer economic harm as a result of the alleged violation, *i.e.*, that there has been an appreciable lessening in the service or the availability of the products to the public or that the public has been deprived of a product or service of over-all superiority. *Radiant Burners, Inc.* v. *Peoples Gas, Light & Coke Co.*, 273 F. 2d 196, 200 (7th Cir. 1960), cert. granted June 6, 1960 (in which the court viewed the complaint as not alleging a *per se* violation); *Reliable Volkswagen Sales and Service Co., Inc.* v. *World-Wide Automobile Corp.*, C.C.H. Trade Reg. Serv., para. 69,644 (D. N.J. 1960); *United States* v. *Bitz*, 179 F. Supp. 80 (S.D. N.Y. 1959).

For the reasons stated below in this opinion, the Court has concluded that neither the complaint nor the evidence and offers of proof, taking the latter as proved, charge or establish prima facie a *per se* violation of the antitrust laws. This case does not involve a boycott, as did *Klor's* v. *Broadway-Hale Stores, Inc.*, 359 U.S. 207 (1958).
815 This appears not only from the complaint but from the evidence offered by plaintiff. Proceeding on the theory that proof of a violation of the antitrust laws without more, establishes public injury, plaintiff offered its evidence as to the conduct alleged to be a violation. This offered evidence, viewed in the light most favorable to

plaintiff, does not establish, prima facie, a boycott or any other *per se* violation of the antitrust laws.

At the most it tends to prove that the railroads yielded to Cross' persuasions that Keeshin be selected as the transfer agent. There is no evidence or offer tending to show any agreement not to allow Parmelee to bid or not to consider Parmelee's bid or not to deal with Parmelee, except as any exclusive contract necessarily implies agreement not to contract with others.

Plaintiff, having failed to show, prima facie, a *per se* violation, was required to allege and prove public injury, even assuming the complaint charged a restraint of trade which, upon application of the rule of reason, might be held unlawful.

The Court finds that the public injury element, as specifically pleaded in the complaint herein, is an esssential part of plaintiff's case in its action for treble damages for alleged violation of the antitrust laws, and that there is no violation by defendants unless their conduct,
816 under applicable principles of law, is adverse to the public interest.

Our courts have sustained exclusive and joint contracts upon the basis that the "combination" involved is an economically productive group, the formation of which promotes trade in the public interest (and, indeed, whose objectives may be accomplished in no other manner), or upon the ground that its lawful main objective justifies the creation of a joint venture which, as a single entity, cannot conspire with itself. (Cf. *City of Chicago* v. *Atchison, Topeka & Santa Fe Ry. Co.*, 357 U.S. 77 (1958), in which both the majority and the minority of the Court recognized the right of railroads to act as a group in selecting a transfer operator to provide inter-station service. *Id.* at 88-89.) Where there can be but one successful bidder for a contract to serve a joint venture, the losers will

not be heard to cry "conspiratorial exclusion." Many economically beneficial projects would be discouraged.

Joint or group action may be justifiable also in a context which is different from that of ordinary commercial matters. See *U. S.* v. *Oregon State Medical Society*, 343 U.S. 326, 336 (1952); *Riggall* v. *Washington County Medical Society*, 249 F. 2d 266 (8th Cir. 1957), cert. den., 355 U.S. 954 (1958).

In *Radiant Burners, Inc.* v. *Peoples Gas, Light & Coke Co.*, 273 F. 2d 196, 200 (7th Cir. 1916), cert. granted
817 June 6, 1960, the Court reviewed many leading cases and concluded:

> "It is our opinion that the complaint also fails to allege such injury to the public as is essential to plaintiff's right to maintain its action. In the absence of a *per se* violation the Sherman Act protects the individual injured competitor and affords him relief, but only under circumstances where there is such general injury to the competitive process that the public at large suffers economic harm. Cf. *Rogers* v. *Douglas Tobacco Board of Trade, Inc.*, 5 Cir., 266 F. 2d 636. The primary purpose of the statute is to protect the public from monopoly."

In *Klor's* v. *Broadway-Hale Stores, Inc., et al.*, 359 U.S. 207, 210 (1958), wherein the defendants, based upon affidavits, sought and procured summary judgment and dismissal of the complaint for failure to state a cause of action, the Court held:

> "We think Klor's allegations clearly show one type of trade restraint and public harm the Sherman Act forbids, and that defendants' affidavits provide no defense to the charges."

It reversed the Court of Appeals for the Ninth Circuit which affirmed the summary judgment, 255 F. 2d 214, and held that the required public injury was missing since "there was no charge or proof that by any act of defendants the price, quantity, or quality offered the public was

affected, nor that there was any intent or purpose to effect a change in, or an influence on, prices, quantity, or quality . . . " Unlike that case, which was decided on the complaint and affidavits, the case at bar was tried before
818 a jury and the final judgment is entered upon that jury verdict and a complete offer of proof.

In the light of these principles, Section 4 of the Clayton Act (15 U.S.C.A. § 15), authorizing suits for treble damages by "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws," places upon the treble damage plaintiff the burden of establishing not merely his own damage but the actual or presumed harm to the public which is a prerequisite to a finding of Sherman Act violation by the defendant. In the latter respect, the allegations of a private claimant are no different than those required in a proceeding brought by the Government. *Radovich* v. *National Football League*, 352 U.S. 445 (1957).

A complaint on its face may appear to allege price fixing, but upon close analysis of the proof it may be discovered that the conduct of defendants with respect to price may not spell out a *per se* offense. See *United States* v. *Morgan, et al.*, 118 F. Supp. 621, 688-91 (S.D. N.Y. 1953); *cf. United States* v. *Colgate & Co.*, 250 U.S. 300 (1919). Territorial restrictions may not involve illegal division of markets. *United States* v. *National Football League*, 116 F. Supp. 319 (E.D. Pa. 1953). And an apparent combination sale practice may lack the essential elements of an illegal tying arrangement. See *Times-*
819 *Picayune* v. *United States*, 345 U.S. 594 (1953); *United States* v. *Kohler*, 1952-1953 Trade Cases, par. 67,453, 67,553 (E.D. Pa. 1953). By the same token, the mere application of the term "boycott" to a refusal to deal will not necessarily spell out the illegal group boycott condemned as *per se* illegal by the Supreme Court. See *Encore Stores,*

Inc. v. *May Department Stores Co.*, 164 F. Supp. 82, 85 (S.D. Cal. 1958). In consequence, the courts must be alert not only to protect the public from the economic harm of antitrust violation, but also to preserve the equally important freedom of individuals to exercise the individual initiative upon which our economy is based.

The standard for determining what combinations (and their activities) involve the prohibited degree of public harm is nowhere spelled out in specific terms. It is set forth in general terms in *Chicago Board of Trade* v. *United States*, 246 U.S. 231 (1918) at page 238:

> "Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint
> 820 and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences."

Under this "rule of reason," it is held, the Sherman Act does not prevent group "adoption of reasonable means to protect interstate commerce from destructive or injurious practices," *Sugar Institute* v. *United States*, 297 U.S. 553, 597-98 (1936), nor prohibit "normal and usual contracts incident to lawful purposes and intended to further legitimate trade." (*Eastern States Lumber Dealers' Ass'n.* v. *United States*, 234 U.S. 600, 609-10 (1914); cf. *Maple*

Flooring Ass'n. v. *United States*, 268 U.S. 563, 582-83 (1925)). Thus, trade associations may be established, and assuming that membership is reasonably open to all in the industry, they may limit their services to members. *Moore* v. *New York Cotton Exchange*, 270 U.S. 593 (1926); cf. *Associated Press* v. *United States*, 326 U.S. 1, 4-5, 24-25 (1945). Groups may also establish rules for trading which are binding upon the members, where these do not operate to prejudice the public interest. *Chicago Board of Trade* v. *United States, supra; Rogers* v. *Douglas Tobacco Board of Trade*, 244 F. 2d 471, 482-83 (5th Cir. 1957), 266
821 F. 2d 636 (5th Cir. 1959), cert. denied 361 U.S. 833, 80 S.Ct. 85 (1959).

Similarly, terminal facilities may be established cooperatively under reasonable regulations and provided that they are made available on a non-discriminatory basis (*United States* v. *Terminal Rr. Ass'n.*, 224 U.S. 383 (1912)); cf. *Associated Press* v. *United States*, 326 U.S. 1, 25 (1945); and groups may take joint action within reasonable limitations in connection with such miscellaneous matters as insurance (*Ruddy Brook Clothes, Inc.* v. *British & Foreign Marine Ins. Co.*, 195 F. 2d 86 (7th Cir. 1952), cert. denied, 344 U.S. 816 (1952)); credit terms (*United States* v. *Cincinnati Fruit & Produce Credit Ass'n.*, 1956 Trade Cases, par. 68,248 (S.D. Ohio); cf. *United States* v. *First National Pictures, Inc.*, 282 U.S. 44 (1930)); public safety (*Radiant Burners, Inc.* v. *Peoples Gas Light & Coke Co., et al.*, 273 F. 2d 196 (7th Cir. 1959), cert. granted, June 6, 1960); and selection of advertising media (*Dist. of Col. Citizen Publ. Co.* v. *Merchants & Mfrs. Ass'n., Inc.*, 83 F. Supp. 994 (D. Col. 1949).

Justice Frankfurter pointed out in his concurring opinion in *Associated Press* v. *United States*, 326 U.S. 1, 27 (1945):

822 " . . . ever since the Sherman Law was saved from stifling literalness by 'the rule of reason' . . . it is not

sufficient to find a restraint. The decisive question is whether it is an unreasonable restraint. This depends, in essence on the significance of the restraint in relation to a particular industry. Compare *Chicago Board of Trade* v. *United States*, 246 U.S. 231, 238."

Plaintiff has recognized its obligation to plead and prove public injury by alleging it in its complaint. Plaintiff alleged in substance that the service provided by Railroad Transfer was less extensive than, inferior to and more costly than the service which Parmelee had rendered and the service which Parmelee proposed to render. (Complaint, pars. 33(f) and (i), 34(d); and see par. 19.) These allegations were denied in defendants' answers.

The allegations that Cross was disabled as a result of his conduct from performing his duties as a Commissioner, is not an allegation of the kind of public injury the antitrust laws are designed to prevent. *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469, 493 (1940); *Kinnear-Weed Corp.* v. *Humble Oil & Refining Co.*, 214 F. 2d 891, 894 (5 Cir. 1954), cert. denied, 348 U.S. 912 (1954).

It is unnecessary to discuss in detail in this opinion the evidence bearing upon the cost of the service, who bears that cost, the extent of the service and the quality of the service. These issues were determined by the 823 jury adversely to plaintiff. Therefore, plaintiff has failed to meet its burden of proving public injury, an essential element of its cause of action in this private treble damage suit. Judgment should therefore be entered for the defendants on this ground.

This Is Not An Antitrust Case

Other grounds exist which require the Court to enter judgment for the defendants. It appears as a matter of law from the facts alleged in the complaint, taken together with the proof introduced or offered at the trial, that no

violation of the antitrust laws has occurred, even assuming that plaintiff's version of the facts is true. Plaintiff's claim does not fall within the family of antitrust violations. The facts charged, if proven, may amount to a violation of some other law or moral or ethical code, but they do not amount to a violation of the antitrust laws. This is so notwithstanding the conclusory allegations of the complaint as to conspiracy, elimination and foreclosing of competition, and restraining and monopolizing. It is the duty of the Court to consider the facts alleged, rather than "incendiary, yet vague, charges" characterizing those facts. Cf. *Automatic Radio Co.* v. *Hazeltine Research, Inc.*, 339 U.S. 827, 834 (1950).

The first question is whether the joint exclusive transfer contract was lawful, apart from the manner in which the selection of the transfer agent was made.

824 *The Legality Of The Exclusive Five-Year Contract Entered Into By The Railroads Jointly*

It must be recognized that in the passage of the years since the adoption of the Sherman Act, Congress has superimposed upon the general policy of competition there expressed additional policies with respect to what may be regarded as regulated industries. Thus, the Supreme Court pointed out in *Federal Communications Comm.* v. *RCA Communications, Inc.*, 346 U.S. 86, 91-92 (1953):

> "That there is a national policy favoring competition cannot be maintained today without careful qualification. It is only in a blunt, undiscriminating sense that we speak of competition as an ultimate good. Certainly, even in those areas of economic activity where the play of private forces has been subjected only to the negative prohibitions of the Sherman Law, this Court has not held that competition is an abso-

lute. See *Chicago Board of Trade* v. *United States*, 246 U.S. 231; cf. Mason, Monopoly in Law and Economics, 47 Yale L. J. 34.

It was not unlawful for the railroads to enter into an exclusive transfer contract with Railroad Transfer Service, Inc. In the first place, the contract entered into with that company was substantially the same as the contractual arrangements which had existed between the railroads and Parmelee for many years. I find that there is no genuine issue as to this. Parmelee dealt with the railroads as a group, the railroads made their contractual arrange-
825 ments acting jointly (with the exception of one or two smaller railroads), and Parmelee's arrangements were exclusive (except for the transfer of certain special groups, such as baseball teams, as to which there is a dispute in an action pending in the Superior Court of Cook County, Illinois). The only difference between the two arrangements is that one was in writing and the other was oral.

The fact that the contract with Railroad Transfer Service, Inc. was for a term of five years does not render it illegal. Parmelee, who had had the exclusive contract for many years, sought a six and one-half year contract on the stated ground that such tenure was necessary to permit amortization of its contemplated investment in new equipment. The request of Keeshin, who as a newcomer had to purchase all the equipment necessary to carry on the business, for a five-year contract for the same stated ground was not unreasonable. If it were, no newcomer could ever have challenged Parmelee's monopoly.

The Supreme Court has held that the exclusive contract between Parmelee and the railroads was not unlawful. In *United States* v. *Yellow Cab Co.*, 332 U.S. 218, 228-229 (1947), the court said:

"Parmelee's contracts are exclusive in nature, . . . It is true, of course, that exclusive contracts for the

transportation service in question are not illegal."
826 See also the opinion of Judge LaBuy upon remand, *U. S.* v. *Yellow Cab Co.*, 80 F. Supp. 936, 944 (N.D. Ill. 1948), and see also *Donovan* v. *Pennsylvania Co.*, 199 U.S. 279, 295-97 (1905) (cited by the Supreme Court in the *Yellow Cab* case); *Delaware L. & W. R. Co.* v. *Morristown*, 276 U.S. 182, 189 (1928); *Black & White Taxi Co.* v. *Brown & Yellow Taxi Co.*, 276 U.S. 518, 528-529 (1928); *Depot C. & B. Co.* v. *Kansas City Terminal Railroad Co.*, 196 Fed. 212, 214 (W.D. Mo. 1911).

In *City of Chicago* v. *Atchison, T. & S. F. Ry. Co.*, 357 U.S. 77 (1958), in which the Court held invalid an ordinance of the City of Chicago which would have restricted the right of Railroad Transfer Service to operate on the city streets in performing the transfer service for the railroads, the Court again expressly recognized the propriety of the railroads acting as a group to select an exclusive transfer agent. In that opinion, the Court, speaking of the Chicago transfer problem, said (p. 79):

> "Because of the serious problems of scheduling and passenger convenience involved in this interchange, the railroads, as a group, have long provided for the transfer of through passengers from one station to another by a systematic and highly organized motor carrier operation."

The Court in that case reviewed the applicable sections of the Interstate Commerce Act and held that the transfer service "is at least authorized, if not actually re-
827 quired," by the Act as a reasonable and proper interchange facility (357 U.S. at 85-86). The Court said further (p. 88):

> "Because of close time schedules, the great volume of traffic and its irregular ebb and flow, the railroads obviously need a cooperative and dependable transfer operator with suitable equipment who is willing to work in close harmony with them. The railroads have

> rejected as unsuitable the only transfer service now licensed to operate by the City. If local officials can prevent them from providing this service by some other means, a breakdown in the organized transfer of passengers could result. At a minimum, they would be forced to deal once again with the rejected operator.

It is to be noted that Parmelee intervened in that case and that the six railroad defendants were parties plaintiff.

Even if it had not been decided by the express holdings of the cases first cited above that the railroads could properly enter into an exclusive transfer contract with a single transfer agent, this conclusion would follow from the Supreme Court's holding in the *City of Chicago* case that the service is authorized as a reasonable and proper interchange facility, which is in accordance with the holdings in *Cederblade* v. *Parmelee*, 166 F. 2d 554 (7th Cir. 1948) and *Commercial Zones & Terminal Areas*, 48 Motor Carrier Cases 418 (1948). It is well settled that railroads have the right to combine their terminal facilities and to select a joint agent to operate such facilities. *United States* v. *St. Louis Terminal*, 224 U.S. 383, 402, 410 (1912); *Central Transfer Co.* v. *Terminal Railroad Association of St. Louis*, 61 F. 2d 546, 550 (8th Cir. 1932), affirmed 288 U.S. 469 (1933); *Transfer in St. Louis and East St. Louis by Dray & Truck*, 155 I.C.C. 129, 140, 143-144 (1929).

It follows that the railroads had the right to join together in selecting a transfer agent and in entering into an exclusive contract with that agent. The only question remaining is whether the railroads violated the antitrust laws by the manner in which they selected one of the two competitors for the contract.

The Selection of the Transfer Agent

The facts which plaintiff alleges and which it either proved or formally offered to prove are as follows: Some

time prior to March 15, 1955, Keeshin, for the purpose of having the contract awarded to him, induced Cross to persuade the defendant railroads, by promising favors to the railroads, to vote in favor of recommending that Keeshin's proposal for a five-year exclusive contract be accepted by the railroads instead of Parmelee's proposal for a six and one-half year exclusive contract. This is the substance of the charge which plaintiff offered to prove.

The Sherman Act did not require the railroads to award the contract to the lower bidder or to deal with Par-
829 melee if they preferred to deal with Keeshin. Cf. *City of Chicago* v. *Atchison, T. & S. F. Ry. Co.*, 357 U.S. 77, 88 (1958). Their selection of one competitor rather than another deprives the other of the opportunity to perform the service, *i.e.*, to engage in the transfer business, and to that extent restrains interstate commerce, but such a restraint is not within the Act.

In *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469 (1940), it was contended that a conspiracy of the defendant to stop the operation of the plaintiff's factory by means of a sit-down strike in order to enforce their demands against the plaintiff violated the Sherman Act. The Court rejected this contention, holding that a sit-down strike, though it restrained the movement of goods in interstate commerce, was not the kind of restraint of commerce which the Sherman Act is designed to prohibit. The Court said (pp. 512-513):

> " . . . The Sherman Act was not enacted to police interstate transportation, or to afford a remedy for wrongs, which are actionable under state law, and results from combination and conspiracies which fall short, both in their purpose and effect, of any form of market control of a commodity, such as to 'monopolize the supply, control its prices or discriminate between its would-be purchasers.' . . .

"If, without such effects on the market, we were to hold that the local factory strike, stopping production and shipment of its products interstate, violates the Sherman law, practically every strike in modern in-
830 dustry would be brought within the jurisdiction of the federal courts, under the Sherman Act, to remedy local law violations."

The authority of the *Apex* case on the point involved here is not impaired by the footnote comment on the case in *Klor's* v. *Broadway-Hale Stores, Inc.*, 359 U.S. 207, 213, n. 7 (1958). There the Court was addressing itself to language in the opinion tending to support the proposition that effect on prices is essential to a Sherman Act violation. The Court did not question the fundamental holding of the case that conduct of the kind there involved was not within the scope of the Sherman Act, and that such conduct is not made into an antitrust violation by accompanying conduct which is illegal under some other law.

The awarding of a contract, which the awarding parties have a right to award on any basis they choose to one rather than to another competitor for the contract, is no more within the scope of the Sherman Act than is the sit-down strike of the *Apex* case. Each of these courses of conduct restrains trade in a sense. Neither constitutes a restraint of trade within the meaning of the Sherman Act, however. To hold otherwise would render the Sherman Act a lowest responsible bidder statute, which was plainly not the intent of Congress.

The automobile dealership cases are also pertinent. In *Schwing Motor Co.* v. *Hudson Sales Co.*, 138 F. 2d
831 899 (D.C. Md. 1956), the plaintiffs were former Hudson dealers whose dealership contracts Hudson had refused to renew. Plaintiffs alleged that Hudson and the sole remaining Hudson dealer in Baltimore had conspired to eliminate the plaintiffs from competition with the remaining dealer in the sale of automobiles and parts. As

the court stated it, the issue was "whether an agreement between an automobile manufacturer and a retail dealer, pursuant to which the manufacturer refuses to renew its expiring agreements with two other dealers, and gives the dealer a 'virtual monopoly' of the sale of one make of automobile in one city, is a combination or conspiracy to monopolize trade or commerce, or in restraint of trade or commerce, in violation of the Sherman Act and of the Clayton Act."

The issue in the *Schwing* case is very similar to that in the case at bar. It was there alleged that the successful dealer had induced Hudson to refuse to renew the plaintiff's dealerships, just as in the case at bar it is alleged that Keeshin with Cross' help induced the defendant railroads to award the contract to Keeshin's company rather than Parmelee, which meant that the railroads would "refuse to deal" with Parmelee. The substantial distinction between the two cases is that in the *Schwing* case the conduct of the defendants resulted 832 in the remaining dealers receiving all of a business which had previously been divided among several competitors; while in the case at bar the business had always been in the hands of one firm because it was necessary for the railroads to employ a single agent to perform the transfer service. Consequently, in the case at bar there was no change in the economic situation as a result of the conduct complained of.

The court in the *Schwing* case held that the plaintiff failed to allege a violation of the Sherman Act, saying (p. 902):

> "Every manufacturer has a natural and complete monopoly of his particular product, especially when sold under his own private brand or trade name. . . . A refusal to deal becomes illegal only when it produces an unreasonable restraint of trade or monopoly forbidden by the Antitrust laws."

The Court also pointed out (p. 903) that one has a right to deal with one person rather than another and may grant exclusive contracts which necessarily involve a limited monopoly in the area they cover, and that "such limited monopolies are not invalid . . . unless they are used to violate the antitrust laws." Finally, the court said (p. 905):

> "No horizontal conspiracy between competitors, no effort to extend the manufacturers' natural monopoly of its own product, no effort to establish market dominance and drive out the products of competitors is alleged."

833 These same principles apply in the case at bar. It is well settled that the railroads had the right to employ an exclusive transfer agent to perform the transfer service, and that it is in the best interests of the public and the railroads to do so. The natural result of the exercise of this right is a limited monopoly in the hands of the agent selected to render the service. This limited monopoly or the alleged agreement between the successful bidder and the railroads with respect to it does not violate the antitrust laws in any way. There is no effort to extend the natural monopoly, no horizontal conspiracy between competitors, and no effort to establish market dominance.

The decision in the *Schwing* case was affirmed *per curiam* by the Court of Appeals for the Fourth Circuit, which adopted the opinion of the district court, 239 F.2d 176, cert. den. 355 U.S. 823.

The same reasoning was followed in the very similar case of *Webster Motor Car Co.* v. *Packard Motor Car Co.*, 243 F.2d 418, cert. den. 355 U.S. 822, in which the Court of Appeals for the District of Columbia reversed a decision of the District Court (135 F.Supp. 4) which was in conflict with the *Schwing* case. The court held that there was no attempt to create a monopoly, since there was no

evidence of any attempt to get control of the relevant
834 market, and that there was no contract or conspiracy in restraint of trade within the meaning of the Sherman Act. (243 F.2d 420) The court also held that neither the fact that an exclusive arrangement of this kind eliminates other dealers in the same product of the same manufacturer nor the fact that the remaining dealer induced the manufacturer's decision to grant the exclusive dealership rendered the conduct complained of a violation of the Sherman Act. (243 F.2d 421) See also *Riedley* v. *Hudson Motor Car Co.*, 82 F.Supp. 8 (W.D. Ky. 1949); *Fedderson Motors, Inc.* v. *Ward*, 180 F.2d 519 (10th Cir. 1950); *Neumann* v. *Bastian-Blessing Co.*, 70 F. Supp. 447 (N.D. Ill. 1947); *Hudson Sales Corp.* v. *Waldrip*, 211 F.2d 268 (5th Cir. 1954), cert. den. 348 U.S. 821.

The complaint also alleges that in order to induce the railroads to vote in favor of Keeshin's proposal, Cross promised to give them favorable consideration in matters pending before the Interstate Commerce Commission, and that he did give them favorable consideration. It is to be observed that these allegations found no support in plaintiff's elaborate offers of proof, which are assumed for present purposes to have been made in good faith and to state facts which plaintiff could prove.

However, apart from whether these allegations were or could be proved, they would seem to add nothing to the
835 basic charge of plaintiff, which is that Keeshin induced Cross to persuade the railroads to award the contract to Keeshin rather than Parmelee. The fact that in so acting Cross or Keeshin or the railroads were violating some other statute, law, or ethical or moral code does not render their conduct violative of the antitrust laws if it is not otherwise so. Thus in *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469, (1940), the Court held that restraints which were not within the Sherman Act when achieved by peaceful

means were not brought within the scope of the act because they were attended by unlawful violence. The Court said (p. 513):

> "The Sherman Act is concerned with the character of the prohibited restraints and with their effort on interstate commerce. It draws no distinction between the restraints effected by violence and those achieved by peaceful but often times quite as effective means. Restraints not within the act, when achieved by peaceful means, are not brought within its sweep merely because, without other differences, they are attended by violence."

The same principle was applied in *Kinnear-Weed Corp.* v. *Humble Oil & Refining Co.*, 214 F.2d 891, 894 (5th Cir. 1954), cert. den., 348 U.S. 912 (1954), in which the Court said:

> "It is true that the conduct charged to the defendant was in fact antagonistic to the purpose of the patent laws and that that purpose is a public purpose . . . That, however, is not the kind of public purpose protected by the antitrust laws, which are designed instead to protect the free flow of interstate commerce."

836 In *Arthur* v. *Kraft-Phenix Cheese Corp.*, 26 F.Supp. 824 (D. Md. 1937), it was contended that an otherwise lawful refusal to sell at a dealer's discount was converted into a Sherman Act violation because it was designed to force the plaintiff to buy out a competitor who was indebted to the defendant, *i.e.*, the conduct was for an improper motive. The court said (p. 828):

> "Essentially what is complained of is a private wrong or common law tort in which the public interest is not involved. It is legally quite impossible to understand how the public interest could be concerned in this individual private controversy. There is nothing in the alleged facts to show that the motive of the defendant was to restrain trade or to lessen competition and certainly nothing to show that the alleged

> unreasonable demand on the plaintiff could possibly have the effect of lessening the competition, or of raising prices or even maintaining prices. Nor is it alleged in even the most general terms that the transaction had any effect whatever on the volume of the defendant's business or the prices at which its products were sold. It is quite impossible to understand how the alleged act complained of would tend to promote or increase the defendant's monopoly of its own product. Every manufacturer has naturally a complete monopoly of his particular product especially when sold under his own private brands, and no private controversy with the distributor could legally tend to increase that type of a natural monopoly. The Sherman Act is, therefore, clearly not really involved."

Whether Keeshin or Parmelee was chosen to perform the transfer service, the transfer agent would have a monopoly in one sense. However, this is a lawful
837 monopoly, as the Supreme Court has held. Its nature was not affected by the alleged improper inducement affecting the award of the contract.

A claim comparable with that of Parmelee was made in *Hohensee* v. *Akron Beacon Journal Publishing Co.*, 141 F.Supp. 90, 174 F.Supp. 450 (N.D. Ohio, 1959), affirmed, C.C.H. Trade Reg. Rep., par. 69,721 (6th Cir., May 13, 1960), in which it was alleged that the defendants had conspired to restrain the trade of plaintiff by slander, libel and other tortious acts. In holding that the complaint failed to state a claim upon which relief could be granted, the court said (171 F.Supp. at 92):

> "The Antitrust laws do not purport to afford remedies for all torts committed by or against persons engaged in interstate commerce. Whether plaintiff has a cause of action for slander or libel is not a matter for determination in this action."

The Court cited *Hunt* v. *Crumboch*, 325 U.S. 821 (1945), in which the Supreme Court held that a labor union's re-

fusal, motivated by a desire to punish plaintiff, to admit plaintiff's employees to membership in the union, thereby rendering it impossible for plaintiff to continue in business, was not a violation of the Sherman Act. Speaking for the Court, Mr. Justice Black said (p. 826):

> "That Act does not purport to afford remedies for all torts committed by or against persons engaged in interstate commerce."

838 See also *Rossi* v. *McCloskey & Co.*, 149 F. Supp. 638 (E.D. Pa. 1957).

Accordingly, it would add no more to the conduct of Keeshin and Cross as violations of the antitrust laws if Cross promised the railroads favorable consideration in matters pending before the Interstate Commerce Commission, than if he had induced the railroads' action by threats of violence, blackmail or other means unlawful under some law other than the antitrust laws. It would add no more to the railroads' conduct, so far as the antitrust laws are concerned, that they were persuaded by promises of favors than if they acted through any other improper motive unrelated to those laws.

It would be no service to the Sherman Act, which plays such a vital role in preserving our free economy, to attempt to drag within its scope every kind of misconduct which seems to fit nowhere else. The purposes of that Act are best served by vigorous enforcement of it in the cases in which it was intended to apply, *i.e.*, cases in which restriction or monopolization of trade or commerce are the object or the result of defendant's conduct.

It therefore appears from the facts alleged in the complaint and proved and offered to be proved at the trial that no violation of the antitrust laws has occurred. Judgment should be entered for defendants on this additional ground.

/s/ J. H. Miner

Judge

June 30, 1960.

840

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

FINAL JUDGMENT

This Cause Coming On To Be Heard This 30th day of June, 1960 pursuant to the order setting the case for entry of judgment on this date; and

The Court having held that the railroads terminating in Chicago had the right to act jointly in negotiating and executing an exclusive contract with Railroad Transfer Service, Inc. for the performance by the latter of the interstation transfer service in Chicago, for a period of five years commencing October 1, 1955, and that their entering into such a contract did not constitute a violation of Section 1 or Section 2 of the Sherman Act (15 U.S.C. §§ 1, 2) or any other provision of the antitrust laws; and

The Court having held further that plaintiff cannot maintain its private antitrust action unless it can es-
841 tablish public injury,—*i.e.*, that the conduct complained of is reasonably calculated to prejudice the public interest and has resulted in an appreciable lessening of service to the public or has deprived the public of a service of over-all superiority, and having ordered a separate trial of said issue of public injury before trial of any other issue, and said separate trial having been held before a jury impanelled to try said issue, and the jury having by its verdict found in favor of defendants on said issue of public injury; and

The Court also having considered all the evidence offered by plaintiff and received upon the trial, and having permitted plaintiff on the trial to make complete and detailed offers of proof as to all issues in the case, over defendants' objections, and having considered said offers of proof made by plaintiff which the Court refused, including those which the Court ordered stricken, and having

determined that, viewing said evidence and offers of proof in the light most favorable to plaintiff, and making all reasonable inferences therefrom in favor of plaintiff, said evidence, that received on the trial and that offered by plaintiff and rejected by the Court, fails to establish a violation of Section 1 or Section 2 of the Sherman
842 Act or any other provision of the antitrust laws; and

The Court also having determined that the allegations of plaintiff's complaint, as amended, relating to issues other than that determined by the verdict of the jury, do not state a claim upon which relief can be granted under Section 1 or Section 2 of the Sherman Act, or any other provision of the antitrust laws; and

The Court having determined that there is no just reason for delay in the entry of final judgment upon the claims asserted in plaintiff's complaint, as amended;

It Is Therefore Ordered And Adjudged that final judgment for defendants on the claims asserted in plaintiff's complaint, as amended, be and hereby is entered on said verdict and on the aforesaid conclusions of the Court, and that plaintiff shall take nothing by its action; and

It Is Further Ordered And Decreed that the remainder of the complaint, as amended, in so far as it sounds in equity, is dismissed for want of equity and final judgment is entered for defendants and against plaintiff on
843 the equitable issues; and

It is Further Ordered And Adjudged that defendants shall recover their costs against said plaintiff and that execution shall issue therefor; and

It Is Further Ordered that the counterclaims of defendants are continued for trial and disposition until further order of the Court.

Enter:

/s/ J. H. Miner

Judge

June 30, 1960

844

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 56 C 323)

NOTICE OF APPEAL

(Filed July 20, 1960)

Notice Is Hereby Given that Parmelee Transportation Company, plaintiff above named, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final judgment entered in this action on June 30, 1960.

Dated: July 20, 1960.

Parmelee Transportation Company,
Plaintiff-Appellant

By *Thomas C. McConnell*
By Thomas C. McConnell

Lee A. Freeman
Lee A. Freeman

Herbert B. Lazarus
Herbert B. Lazarus

Its Attorneys

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845

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on July 20, 1960, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Albert J. Meserow,
231 S. LaSalle Street,
Rm. 1353,
Chicago 4, Illinois
and
Jerome F. Dixon,
111 W. Washington Street,
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Attorneys for John L. Keeshin and Railroad Transfer Service, Inc.

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Attorneys for Howard E. Simpson, Paul E. Feucht, Wayne A. Johnston, Fred G. Gurley, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Chicago and North Western Railway Company, Illinois Central Railroad and The Pennsylvania Railroad Company.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 20th day of July, 1960.

Roy H. Johnson,
Roy H. Johnson, Clerk
By *Gizella Butcher*
Deputy Clerk

(SEAL)

847 July 22, 1960: Filed Notice of Appearance of Appellee The New York Central Railroad Company and its attorneys.

849 July 26, 1960: Filed Notice of Appearance of Appellees, Howard E. Simpson, et al., and their attorneys.

851 Filed Notice of Appearance of Appellee Hugh W. Cross and his attorney.

852 August 4, 1960: Filed Notice of Appearance of Appellees, John L. Keeshin, et al., and their attorneys.

853 August 15, 1960: Filed Stipulation as to record on appeal.

859 August 26, 1960: Filed Motion of plaintiff.

862 Order entered extending the time in which to file record on appeal to and including October 18, 1960.

863 October 4, 1960: Filed Stipulation.

864 Order entered directing copies of depositions of John L. Keeshin, filed July 17, 1959, be certified in lieu of originals not available in Clerk's office at this time.

865

Northern District of Illinois }
United States of America } ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that the above and foregoing are the original papers constituting the record on appeal in the cause entitled: Parmelee Transportation Company, Plaintiff vs. John L. Keeshin, et al., Defendants, No. 56 C 323, as follows:

Complaint filed February 16, 1956

Motion of Defendants Railroad Transfer Service, Inc. and John L. Keeshin, to dismiss the complaint and to strike certain parts of complaint, filed April 23, 1956

Answer of Defendant Hugh W. Cross, filed April 25, 1956

Motion to dismiss of New York Central R.R. Company, filed April 25, 1956

Stipulation filed September 2, 1960, with copy of Motion to dismiss etc., of certain defendants attached thereto

Memorandum of the Court filed September 19, 1956

Order entered September 19, 1956, denying motion of each defendant to dismiss and each defendant granted 30 days from date to answer complaint

Answer of John L. Keeshin, and Railroad Transfer Service, Inc., filed October 19, 1956

Answer of Defendant Railroad Presidents and certain of defendant Railroads filed October 19, 1956

Answer of Defendant The New York Central Railroad Company filed October 19, 1956

Interrogatories propounded to plaintiff by certain defendants, filed May 31, 1957

866 Interrogatories propounded to Defendant The Baltimore and Ohio Railroad Company by Plaintiff, filed July 1, 1957

Interrogatories propounded to Defendant The Atchison, Topeka and Santa Fe Rwy. Co. by Plaintiff filed July 1, 1957

Interrogatories propounded to Defendant Illinois Central Railroad Company by plaintiff filed July 1, 1957

Interrogatories propounded to Defendant New York Central Railroad Company by Plaintiff filed July 1, 1957

Interrogatories propounded to defendant Chicago and North Western Railway Co. by Plaintiff filed July 1, 1957

Interrogatories propounded to Defendant The Pennsylvania Railroad Company by Plaintiff filed July 1, 1957

Objections of Plaintiff to Interrogatories propounded by certain defendants on May 31, 1957, filed July 1, 1957

Memorandum in support of plaintiff's objections to interrogatories propounded by certain defendants on May 31, 1957, filed July 1, 1957

Memorandum in opposition to plaintiff's objections to interrogatories filed July 9, 1957

Plaintiff's reply memorandum in support of objections to interrogatories propounded by certain defendants, filed July 16, 1957

Objections of Defendant, Illinois Central Railroad to interrogatories propounded by plaintiff, filed August 7, 1957

Objections of Defendant, The Pennsylvania Railroad Company to interrogatories propounded by Plaintiff, filed August 7, 1957

Objections of Defendant The Baltimore and Ohio Railroad Company to interrogatories propounded by plaintiff filed August 7, 1957

Objections of Defendant Atchison, Topeka and Santa Fe Railway Company to interrogatories propounded by Plaintiff filed August 7, 1957

Objections of Defendant New York Central Railroad Company to Interrogatories propounded by plaintiff filed August 7, 1957

Objections of Defendant Chicago and North Western Railway Company to interrogatories propounded by plaintiff on July 1, 1957, filed August 7, 1957

867 Brief in support of Railroad Defendants' objections to plaintiff's interrogatories, filed August 7, 1957

Answer to interrogatories propounded to plaintiff on May 31, 1957 by certain defendants, filed August 26, 1957

Motion of Defendant Railroads and Railroad Presidents to compel answer to certain interrogatories, filed September 6, 1957

Brief in support of motion of defendant Railroads and Railroad Presidents to compel answer to certain interrogatories, filed September 6, 1957

Plaintiff's Brief in opposition to the railroad Defendants' objections to plaintiff's interrogatories, filed September 6, 1957

Answer of Parmelee Transportation Company to motion of certain defendants to compel answers to interrogatories filed September 24, 1957

Supplemental answer to interrogatory 7 (B) propounded to Plaintiff on May 31, 1957 by certain defendants, filed September 24, 1957

Reply of Railroad Defendants to plaintiff's Brief in opposition to objections to interrogatories filed October 4, 1957

Reply Brief in support of motion of defendant Railroads and Railroad Presidents to Compel answer to certain interrogatories filed October 10, 1957

Order entered October 14, 1957 denying motion of defendant railroads to set down for hearing their objections to interrogatories

Memorandum of the Court filed November 13, 1957

Memorandum in support of motion of defendant Railroads and Railroad Presidents to reconsider ruling sustaining plaintiff's objections to interrogatories propounded by certain defendants on May 31, 1957, filed November 15, 1957

Notice and Second set of interrogatories propounded to Plaintiff by Defendant Railroads and Railroad Presidents, filed January 6, 1958

Objections of Plaintiff, to interrogatories propounded by defendant Railroads and Railroad Presidents on January 7, 1958, filed January 16, 1958

Motion of Plaintiff to extend time to answer interrogatories, filed January 20, 1958

868 Plaintiff's brief in support of objections to interrogatories propounded by Defendant Railroads and Railroad Presidents on January 7, 1958, filed January 22, 1958

Answer to second set of interrogatories propounded to Plaintiff on January 7, 1958, by certain defendants, filed February 6, 1958

Second supplemental answer to interrogatories propounded to plaintiff on May 31, 1957 by certain defendants, filed February 6, 1958

Brief in opposition to Plaintiff's objections to second set of interrogatories propounded by defendant Railroads and Railroad Presidents on January 7, 1958, filed February 7, 1958

Plaintiff's reply brief in support of objections to interrogatories propounded by defendant Railroads on January 7, 1958, filed February 18, 1958

Defendants' supplementary brief on objections to second set of interrogatories, filed March 4, 1958

Order entered June 10, 1958

Plaintiff's answer to second set of interrogatories propounded by defendant Railroads and Railroad Presidents on January 7, 1958, filed June 30, 1958

Notice and Motion filed July 31, 1958

Order entered August 1, 1958

Plaintiff's list of documents filed September 25, 1958

List of documents of Hugh W. Cross, defendant, filed October 10, 1958

List of documents of defendant Railroads and Railroad Presidents, filed October 20, 1958

Notice and list of documents of the New York Central Railroad Company filed October 22, 1958

List of documents of John L. Keeshin, and Railroad Transfer Service, Inc., Defendants, filed November 3, 1958

Objections of Defendant, Hugh W. Cross, to plaintiff's list of documents, filed November 3, 1958

Objections of Plaintiff to the admission in evidence of documents appearing on the list submitted by the defendant Railroads, and Railroad Presidents, filed November 3, 1958

Objections of Defendant Railroads and Railroad Presidents to documents included in plaintiff's list filed November 4, 1958

869 Objections of Defendants, John L. Keeshin and Railroad Transfer Service, Inc., to plaintiff's list of documents, filed November 5, 1958

Motion of Defendant Railroads and Railroad Presidents to strike plaintiff's list of documents and in the alternative for pre-trial rulings, filed January 30, 1959

Adoption and Joinder by John L. Keeshin, and Railroad Transfer Service, Inc., Defendants, in motion of Defendants R.R. and Railroad Presidents to strike plaintiff's list of documents and in the alternative for pre-trial rulings, filed February 11, 1959

Adoption and Joinder of Hugh W. Cross, defendant in motion and brief on behalf of Defendants Railroads and Railroad Presidents to strike plaintiff's list of documents and in the Alternative for pre-trial rulings, filed March 4, 1959

Motion for leave to file amendments to complaint, filed May 14, 1959, amendments to complaint attached

Order entered May 14, 1959, granting leave to plaintiff to file its amendments to complaint

Answer of defendant Railroad Presidents and certain of defendant Railroads to complaint as amended filed May 14, 1959

Answer of Defendants John L. Keeshin and Railroad Transfer Service, Inc. to the Amendments to the complaint herein, filed May 25, 1959

Answer of defendant, The New York Central Railroad Company, to certain amendments to the complaint filed June 3, 1959

Order entered June 10, 1959, granting leave to plaintiff to file motion for partial summary judgment instanter, etc.

Plaintiff's motion for partial summary judgment filed June 10, 1959

Exhibit A filed June 10, 1959

Opposition to plaintiff's motions of June 10, 1959, filed June 10, 1959

Affidavit of E. B. Padrick filed by defendant Railroads and Railroad Presidents in opposition to plaintiff's motion for summary judgment filed June 30, 1959

Brief of Defendants John L. Keeshin, et al., filed August 12, 1959, attached thereto Affidavits of Edward Bayr, et al.

870 Order entered November 12, 1959, directing filing of transcript in pre-trial conference on May 11, 1959

Order entered November 30, 1959, denying plaintiff's motion for summary judgment etc.

Memorandum of the Court dated December 4, 1959, and filed March 10, 1960

Memorandum of the Court and order dated March 10, 1960

Order entered May 3, 1960, overruling defendants' motion that court direct jury to return finding for defendants etc.

Given and refused instructions filed May 10, 1960

Verdict filed May 10, 1960

Order entered May 10, 1960, judgment on the verdict and order entered holding Thomas C. McConnell and Lee A. Freeman in direct contempt of court

Order entered May 12, 1960, amending orders entered on May 10, 1960

Memorandum opinion and final judgment entered June 30, 1960

Notice of Appeal of Plaintiff filed July 20, 1960 Clerk's certificate of mailing attached thereto

Notice of Appearance of Appellees The New York Central Railroad Company, and its attorneys filed July 22, 1960

Notice of Appearance of Appellees Howard E. Simpson, et al., and their attorneys, filed July 26, 1960

Notice of appearance of Appellee Hugh W. Cross, and his attorney filed July 26, 1960

Notice of Appearance of Appellees John L. Keeshin, et al., and their attorneys filed August 4, 1960

Motion of Plaintiff filed August 26, 1960

Order entered August 26, 1960, extending time in which to file record on appeal to October 18, 1960

Stipulation as to Record on Appeal filed August 15, 1960

871 Stipulation filed October ...., 1960

Order entered October ...., 1960, directing copies of Depositions of John L. Keeshin, filed July 17, 1959 be certified in lieu of originals not available in Clerk's office at this time

filed and entered among the records of the said Court in my office on the dates indicated.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 18th day of October, 1960.

Roy H. Johnson

Clerk

By Gizella Butcher

Deputy Clerk

(SEAL)